

# **THE PROVISION OF FULL OWNERSHIP RIGHTS TO SOWETO HOUSEHOLDS AS A GOVERNMENT SERVICE DELIVERY PRIORITY IN THE NEW DISPENSATION**

**by**

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submitted in accordance with the requirements

for the degree of

**MASTER OF PUBLIC ADMINISTRATION**

at the

**UNIVERSITY OF SOUTH AFRICA**

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January 2017

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**THE PROVISION OF FULL OWNERSHIP RIGHTS TO SOWETO  
HOUSEHOLDS AS A GOVERNMENT SERVICE DELIVERY  
PRIORITY IN THE NEW DISPENSATION.**

I declare that the above dissertation is my own work and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.

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**SIGNATURE**

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**DATE**

## **ACKNOWLEDGEMENTS**

It would have been extremely difficult for me to reach the end of this academic journey at the University of South Africa without the support of certain individuals who fortified me as I was studying toward this Master's Degree.

I am immeasurably grateful to my supervisor, Mr B.C. Lekonyane for his academic encouragement and guidance. My gratitude also extends to the Gauteng Department of Human Settlements Officials and Management for their prodigious role in the success of this study.

Special thanks to my special friends and colleagues, Ms Amina Wanda and Ms Refilwe Waterson, programme specialists and excellent typists, for their professional guidance and assistance. My sincere gratitude goes to my family “Ama-Ntima Amahle na-Zikhethayo”, my Dad, Mom, my wife, Lindi and my children, for their confidence in me which revived my strength for the study.

I also thank everyone who supported me throughout my studies. I believe that without your support, I could not have completed this project.

## **ABSTRACT**

Land is a finite resource for sustainable livelihoods of the general population and the foundation of South Africa's diverse culture. However, throughout our South African history, the land question has been a contentious, sensitive and emotive issue ever since the inception of the colonial era, thus the democratic dispensation views the Land Reform Programme as a panacea to the historical inequalities with regard to land ownership, distribution and forced removals, as well as viewing it as a tool to achieve socio-economic and political stability.

Since globally, land reform arose mainly because of inequalities of resources or to control resources, the overall view in South Africa is that land ownership can be optimally utilised for redistribution, reform, effective administration and for developmental purposes; and, as a result, change in land ownership, use and control has become imperative.

This study seeks to evaluate the democratic government's intervention and the efficacy of the urban tenure reform programme in dealing with unequal and racial ownership of urban land in the old(pre 1994) former Black urban settlements such SOWETO, by investigating legislation and policy related to land ownership, and the current tenure and ownership system and status in both Zola and Orlando. Document analysis is a form of qualitative research used by the researcher to provide voice and meaning around an assessed researched topic, and findings further reveal the challenges faced in the implementation or execution phase of the urban tenure remedial programme, and the current status and the remedial programme benefits, while recommendations are made in terms of systems and processes in order to accelerate service delivery, and with the emphasis of the importance of capacity building for stakeholders, including the benefiting community. misperception that the Land Reform Programme only relates to the "rural" areas and "the transfer of agricultural land from dissertation investigates the evolution of land tenure or ownership rights in the former black urban human settlements, looking at the discriminatory laws and policies of the past, consequent political resistance and other milestones as well as the democratic government's interventions in this regard whites to

## Clarification of Concepts/Terminology

- **Adjudication Hearing:** A quasi-judicial forum for the resolution of ownership or housing disputes.
- **Council-/State-owned houses:** Houses built and operated by local councils and rented out to primarily working class people.
- **Housing Bureau:** Management committee comprising of officials from the City of Johannesburg and the Provincial Department responsible for overseeing the transfer of state-owned houses from the state to individual owners.
- **Land Tenure Rights:** Real land rights that entail outright ownership for which a full title deed is registered.
- **Local Committee:** Community representatives who serve as “eyes and ears” of the community in the transfer of housing projects.
- **Soweto:** An abbreviation for South Western Townships, it is an urban settlement within the municipal jurisdiction of the City of Johannesburg, and predominantly inhabited by blacks who reside in council-owned rental properties.
- **Title Deed:** A legal document used to prove ownership for a piece of land or property, and includes the property description.
- **Township:** In the South African context, the term is roughly used in reference to an urban settlement for non-whites (Africans, Indians and coloureds), built on the periphery of towns and cities.
- **Transfer of housing:** Process whereby tenants of state-owned housing are financially assisted to acquire full ownership rights of properties they have occupied prior to the new dispensation.
- **Urbanisation:** A process whereby a population shifts from rural to urban areas in search and pursuit of socio-economic opportunities, such as employment, health and social facilities.

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# CHAPTER ONE: OVERVIEW OF THE STUDY

## 1.1 INTRODUCTION

South Africa's history is characterised by colonialism, racial domination and land dispossession. The local black population attempted to resist these impositions, but eventually succumbed and lost their land to the mighty military conquest, legal intricacies and trickery of the European colonisers.

The racial manipulation of rights to land was a fundamental tenet of both the colonial and apartheid political systems, thus the eradication of poverty and promotion of equitable access to land became a priority for the post-apartheid government along with the call for the delivery of growth and development.

Consequently, the Land Reform Programme and other related policies were formulated to deal with the effects of colonisation, racial domination and land dispossession.

Interestingly, there is a contrary argument that large parts of Africa were unoccupied at the time of European arrival, irrespective of the documentary evidence from the first European who settled in the Cape, Jan van Riebeeck, who highlighted the confrontational incidents with the Indigenous Khoi-khoi (Rugage, 2004:1).

Rugage (2004:1) further argues that both colonialism and apartheid confined the black majority to the reserves and the cities' peripheries, which were both economically and socially non-viable. Subsequent to the unbanning of political organisations and the release of political prisoners, the need for the current Land Reform Programme arose. As a result, between 1991 and 1997, various legislative measures were instituted to abolish all racially-based laws and policies to promote reconciliation, justice and equality in relation to land issues. Some of the discriminatory laws that were used to deny black people the right to own land are summarised below:

- Native Land Act of 1913 – made more land available to the white population and impoverished black people and denied them a right to economic activities such as

farming and agriculture, forcing them to be dependent on employment in white-owned farms and mines.

- The Native (Urban Areas) Act of 1923 – prohibited blacks from residing in “white” urban areas, as they were only reserved for the white population. Black people’s residential status was limited to a mere labour-resource to service white companies and industries, and they were required to always carry pass books as verification that they were permitted in urban areas. Failure to produce a passbook when asked would result in immediate arrest and being sent back to the rural areas. This Act also empowered municipal authorities to secure and provide land for the development of townships where African labourers and their families would reside, which was regulated through the municipal permit and influx control system.
- The Group Areas Act of 1950 – enabled the apartheid government to carry out forced removals of black people from areas declared as white. This Act was instrumental in the removal of blacks from areas such as Sophiatown, Alexandra and New Clare to the likes of Soweto. The Act was augmented by the Prevention of Illegal Squatting Act of 1955, which made provision for the eviction of people with no formal right to the land.
- The Native Laws Amendment Act of 1952 – narrowed the definition of permanent residents in towns. In terms of Section 10 of the Act, this was limited to only those who had been born in a town and had lived there continuously for not less than 15 years, or who had been employed there continuously for at least 15 years. Consequently, the South African black population was forced to carry identity documents known as pass books and were prohibited from staying in urban areas longer than 72 hours without permission. This system was later extended to black women as well, which resulted in widespread protests such as the Women’s March in 1956 (Apartheid Legislation Timeline 2014:7).

The African National Congress (ANC), as a leading liberation movement, vehemently opposed and abhorred the land dispossession policies and all-applicable legislation. In 1955, the Freedom Charter was adopted, which stated, “South Africa belongs to all who live in it,

and restrictions on land ownership shall be ended, and land shall be divided among those who work on it, to banish hunger and famine”.

Then, during the transition period, the ANC as a governing party in waiting developed the Reconstruction and Development Programme (RDP), which proposed a strategy to ameliorate the injustices of deprivation and denial of access to land, which eventually culminated in the Land Reform Programme.

The need for such a programme arose from the racially discriminatory laws and practices that were still in place right up towards the end of the 20<sup>th</sup> century, especially those related to land ownership. The application of these laws and practices resulted in extreme inequalities in terms of land use and ownership, and with the democratisation of South Africa in 1994, a new Constitution of the Republic of South Africa was developed in order to rectify these injustices. Among others, it provided that the state must take reasonable legislative actions and other measures from its available resources to create an enabling environment for citizens to gain access to land on an equitable basis.

With regard to tenure security, the Constitution further provides that, for people whose tenure was insecure because of the past racially discriminatory laws, the state should redress the situation or upgrade their tenure to secure tenure.

The above-mentioned constitutional provision on tenure security is also applicable and relevant to households in black urban settlements such South Western Townships (Soweto), as black families have occupied council-owned houses for decades merely as tenants without full ownership rights.

Cousins (2013:2), in his article, argued that the Native Land Act of 1913 was discriminatory and that it laid a foundation for apartheid and territorial segregation. The Act formalised the limitations on black land ownership, and denied blacks a link with their ancestral roots. Cousins clearly captures this by saying that the land issue has been a controversial aspect of South Africa’s history and has had a negative impact on the socio-economic and political well-being of the country, and that its resolution is critical for the economic and political stability as well as the general development of the country and its citizens. He then goes on to say that land dispossession of the indigenous people by white settlers created tenure inequality, and

that apartheid exacerbated the situation with forced removals and denial of economic independence for Africans, which led to the creation of separate racial zones and ethnically defined homelands.

Devenish also opinionated on the effect of the Land Act of 1913 in his *Sunday Independent* article (2013:14), when he said that the Land Act formed an integral part of a unilaterally imposed form of territorial segregation on which the policy of apartheid, as conceived and applied by Dr Hendrik Verwoerd and his successors, was to be developed. He went even further by stating that the Land Act of 1913 did an inordinate amount of damage and injustice to the African people by virtue of dispossession and impoverishment, and has left a lasting and prejudicial legacy of land deprivation and resultant economic inequality.

The above statements serve as eloquent testimony that South Africa's history for a dangerously long time was marred and characterised by the policy of land dispossession and separate development based on racial inequality, which resulted in the reallocations and forced removals of the black population.

The purpose of this research study is therefore to trace and investigate the evolution of the tenure system in South Africa with regard to urban households (prior and subsequent to the democratic dispensation), to analyse its effect on the black urban households, and to determine the efficacy of the remedial or reform initiatives intended to redress the situation.

In conducting this study, the researcher discovered that few or no studies have been undertaken in South Africa and elsewhere in relation to urban land tenure reform in formal urban settlements or black townships comprised of state housing rental stock. It is for this reason that document analysis was predominantly focused on policy and legislative frameworks; and, to a certain extent, reference is also made to the theoretical framework of de Soto that a land title programme would enable beneficiaries to use their properties as collateral for economic and investment opportunities. However, that being said, we must first determine its applicability and relevance to the South African context of black urban townships.

As alluded to above, many studies undertaken to date on land reform, for both urban and rural scenarios, are limited to the rural communities, agricultural land, waiting lists, upgrading of slums or informal settlements and the regulatory framework for the 99-year lease and permit system, without focusing on full ownership or secure tenure rights of households in formal, pre-1994 black urban settlements. Louw (2007:1), after detecting this vacuum when it comes to urban tenure reform initiatives, made an observation, in his article that the Upgrade of Land Tenure Rights Act No. 112 of 1991 was one of the first Acts that promised to convert apartheid tenure rights to full ownership rights in the historically black areas, but these developments are neither documented nor is much said about them. By implication, subsequent developmental and remedial programmes on tenure reform are likely to remain undocumented.

## **1.2 BACKGROUND TO THE STUDY**

Ideally, the government and its public institutions should provide all citizens with quality public services consistent with their expectations and preferences, irrespective of race, colour, creed or geographical location. However, in contrast to this noble idea, when the Nationalist Party (NP) came into power in 1948, it pursued a policy of separate development with explicit ethnic grouping by dictating where a specific ethnic group should reside and what it should be entitled to.

In developing the spatial framework of cities, the apartheid planners envisaged and legitimised a way of controlling the influx of African movement to the cities. The post-apartheid democratic government is now expected to tackle these challenges associated with apartheid's problematic urban spatial legacy, as the structure of the cities, their layout, governance and functioning reflect a harmful heritage of segregated land use and denial of economic opportunity, which to this day obstructs their capacity to generate and sustain rapid economic growth.

While black South Africans could not enjoy property ownership rights due to the unjust laws of the past, after the first democratic elections in 1994 they developed expectations that the democratically elected government would finally give them full ownership rights in the form of

title deeds to eradicate economic and social inequality, and thereby create a more equitable and integrated society (Marx and Rubin, 2008:1).

This expectation was based on the belief that through the land title programmes, beneficiaries would be enabled to invest in land and housing and would also have access to credit from financial institutions using their properties as collateral, as lack of title deeds was an impediment in taking advantage of the socio-economic and investment opportunities associated with land titling.

According to Seriti (1987:45-51), the tenure rights for black people in the so-called urban areas of South Africa entailed a convoluted process governed by several pieces of legislation, and the allocation and occupation of the municipal-/council-owned properties by urban black families was limited to occupational rights based on the lease and permit system and in reciprocation to rental payment, with arrears in rental resulting in eviction without a court order and on the mere instruction of the Superintendent of the municipal council.

In the 1980s, urban black townships were in turmoil and ungovernable due to civic and community resistance, using rent boycotts and civic disobedience as tools for achieving their objectives. In an attempt to stabilise the situation, the apartheid government initiated some form of tenure reform whereby blacks were allowed to hold land rights. These however were limited to residential permits and long-term leases, with the land still belonging to the state (Cousins 1997:4).

According to Lahiff (2007:93), as a panacea to the land tenure challenges, the current government seeks to redress the racial imbalance and secure tenure rights of historically disadvantaged communities through the Land Reform Programme. This in turn is guided by the Constitution as it sets out the legal basis for land reform, particularly the Bill of Rights which places a responsibility on the state to carry out land and related reforms.

During South Africa's transition phase in 1991, all racially-based and discriminatory laws were repealed in order to readjust matters in a non-racial manner. The government hence

developed and introduced various remedial legislations and policies, including the Discount Benefit Scheme which sought to facilitate and stimulate the transfer of ownership from the state to occupants of the pre-1994 state-owned stock. Beneficiaries could thereby receive a discount on the selling price of the property, and without paying for the transfer cost as that was incurred by the state. Furthermore, to mediate and adjudicate on housing disputes, quasi-judicial forums were established in each municipal office and were presided by legally qualified professionals (Enhanced Extended Discount Benefit Scheme: 2005).

According to the Gauteng Department of Housing (2002:2), the Discount Benefit Scheme guidelines, as a tenure reform initiative for township houses, were developed and issued to facilitate the promotion of full ownership rights to individual urban households through a benefit scheme or subsidy of R7 500. It further said that these policy guidelines were strongly influenced by consensual negotiations between statutory and non-statutory bodies in the Central Witwatersrand Metropolitan Chamber, and were later endorsed by the late Housing Minister, Joe Slovo, and became binding for both provincial and local government institutions.

Based upon the above reasons, the researcher will focus his research study on the tenure system of the former black urban settlements of Zola and Orlando, which are residential areas in Soweto characterised by the matchbox council-owned houses built and occupied by households between 1938 and 1958 respectively. According to the Johannesburg Property Company (2012:1), the transfer of these houses to individual households would be of great importance as it would vastly improve their quality of life and serve as the basis for a sustainable economy.

### **1.3 RESEARCH PROBLEM**

The core problem of this research study revolves around the racial inequality in terms of ownership or tenure rights in the former black townships under the apartheid regime, as they were severely underdeveloped and cut off from the mainstream economy. However, in the new democratic South Africa, they are now being prioritised and revitalised, and the security of tenure is considered a constitutional right.

Since 1994, the government has enacted legislation and policies that gave effect to the housing and tenure rights as enshrined in the Constitution, and Section 26 of the Constitution guarantees everyone the right to have access to adequate housing and requires the state to take reasonable legislative and other measures toward realizing this right (Department of Housing 2013:8).

Various efforts have been made by the democratic government to redress this anomaly of ownership rights, yet certain institutions and individuals still argue that tenure rights for South African blacks remain the same as they were during apartheid. It is unclear though whether their negativity is based on pure ignorance or the deliberate attempt to trivialise state intervention in the tenure reform programme.

An eloquent testimony to criticism of the government's efforts and commitment to urban tenure reform and in promoting home ownership in the former black townships is the following disparaging statement made by Louw (2011:1) "Wouldn't it be wonderful if black South Africans had equal rights, if they enjoyed the same home ownership rights as whites, if they were emancipated, empowered and trusted? If they were equals of whites and no longer patronised? Won't we rejoice if racism ended not just racism by whites against blacks, and blacks against whites, but racism by blacks against blacks? Imagine a world in which blacks stop treating blacks as if they are inferior and think they should no longer live under patronising laws which deny them the right to own and deal freely with their land."

#### **1.4 PURPOSE AND OBJECTIVES OF THE STUDY**

Land is a physical thing that incorporates the surface of the earth and all things attached to it, both above and below, including human structures and natural resources. The fact that land allocation and ownership are largely political and contentious issues, it means that their resolution involves a number of statutory and non-statutory stakeholders, and since this has always been a complicated process, questions arise as to how it is influenced by politicians and politics?



This research study will investigate the evolution of land tenure or ownership rights in the former black urban human settlements, with specific reference to Zola and Orlando locations.

#### The Objectives of the Study

- To provide an overview of the history of tenure rights in South Africa
- To investigate the legislative and policy frameworks that have and have had an influence on the South African land tenure system
- To investigate the government's intervention in this regard and to determine the efficacy and efficiency of this intervention and other government remedial programmes on urban tenure reform
- To identify the relevant stakeholders and their roles in the urban tenure reform programme.

### **1.5 LIMITATIONS TO THE STUDY**

The first limitation in conducting this study was the discovery that few or no studies have been carried out in South Africa in relation to urban land tenure reform on pre-1994 state-owned properties. For this reason the document analysis was focused predominantly on policy and legislative frameworks, though to a certain extent reference is also made to the theoretical framework of de Soto in terms of its relevance to the South African context, as he argues that land title programmes create an enabling environment for beneficiaries to use their properties as collateral for economic and investment opportunities.

The second limitation is that many studies undertaken to date on land reform for both urban and rural scenarios are limited to rural communities, agricultural land, waiting lists, upgrading of slums or informal settlements and to the lease and permit system, without focusing on full ownership or secure tenure rights of households in formal, pre-1994 black urban settlements.

The third limitation is that since the research study is focused on Zola and Orlando, locations built and occupied between 1935 and 1958 respectively, there is a likelihood that the first permit holders and tenants of records could either be deceased or too frail and old to give

accurate accounts of the sequence of events prior to the titling of their properties. As a result the researcher was forced to rely on document analysis instead.

## **1.6 DELIMITATION OF THE STUDY**

The study is geographically focused on two Soweto locations, namely Zola and Orlando, the reasons being that:

- ☐ they are among the oldest and largest purely black urban settlements in South Africa;
- ☐ they are characterised by the old ‘matchbox’ council-owned houses, which have been occupied by households for decades in exchange for rental, with no full ownership rights;
- ☐ they were built to provide cheap labour accommodation for black workers during the apartheid and colonial eras; and
- ☐ some of the famous civic activists who took part against the notorious Black Local Authorities are from these locations.

The other delimitation of this study is that, despite being focused on Zola and Orlando in Soweto, all pre-1994 state-owned properties in South Africa’s black urban settlements or townships are homogeneous in terms of the following aspects:

- ☐ Design and typology
- ☐ The common reasons for their establishment, which were to provide convenient cheap labour for white mines and industries
- ☐ Their common tenancy regulatory frameworks, such as the Housing (Urban Areas) Act of 1945 and the Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters of 1968, which limited tenure rights to leasing and not full ownership
- ☐ In dealing with the urban tenure inequalities in all these black urban townships or settlements, the South African government, in all spheres, uses a uniform approach and strategy, namely the Enhanced Extended Discount Benefit Scheme.

It is therefore important to note that the findings on both Zola and Orlando locations will be relevant and applicable to all the black urban townships characterised by pre-1994 matchbox houses on the basis of the above-mentioned reasons.

## **1.7 RESEARCH QUESTIONS**

- ☐ What is the history of land tenure rights in South Africa?
- ☐ Which South African legislative frameworks were associated with tenure rights?
- ☐ What led to the tenure reform initiative for South African black urban households?
- ☐ What is the current status of the tenure system in Orlando and Zola?

## **1.8 THE MOTIVATION AND SIGNIFICANCE OF THE STUDY**

As already stated, the contemporary research on land tenure in Southern Africa focuses predominantly on tenure problems associated with rural agricultural land ownership and use, but to the exclusion of urban land issues. The democratic governments primary concerns were thus to address skewed patterns of land ownership and denial of land ownership rights in the post-colonial Southern Africa, not taking into account that urban areas have an increasing demand for land for residential purposes and for its use as a working space.

Saunders (2003:23) argues that tenure rights have always had a critical impact on the social, economic and political development of South Africa. For this reason, land reform was identified as essential and therefore included in the final South African Constitution of 1996 in order to deal with the ills of the past, including discriminatory laws which made the black population landless, poverty stricken, homeless and insecure.

Lombard (2012:13) further argues that secure tenure is recognised as a developmental priority at the international level and has a human rights dimension as well, such as the right to housing and land access.

The motivation to undertake this research study is to fill the existing gap in terms of the complete evolution of land tenure rights in the former black urban settlements, as studies already undertaken on the tenure system are mainly focused on three aspects:-

- The South African Land Reform Policy, which dealt with three strands, namely: land restitution, land redistribution and land tenure reform, and which related to rural communities, agricultural land, labour tenants and upgrading informal land tenure rights.
- Challenges and delays in giving title deeds to beneficiaries of low-cost housing (RDP) built by government after 1994.
- Discriminatory legislative and policy frameworks limiting tenure rights of urban housing to a lease and permit system.

None of these studies addresses the full cycle of the evolution of tenure rights for urban households, from outright denial to the bestowment of secure tenure to occupants of state-owned houses that were built prior to 1994.

The intention of undertaking such a study is to achieve the following:-

- to determine the legislative and policy frameworks that affected the tenure system of pre-1994 housing stock;
- to determine the government's intervention in dealing with the inequality of tenure rights of black urban households;
- to contribute to the history of Soweto, in relation to the evolution of tenure rights or the tenure system; and

To refute disparaging criticisms regarding the government's commitment to urban tenure reform in black urban settlements.

## **1.9 RESEARCH DESIGN AND METHODOLOGY**

### **1.9.1 Research design**

According to Mlotshwa (2007:5), research design entails a detailed plan that encompasses the method and procedures employed in conducting a research study or project.

The research design selected to conduct this research study is content analysis, looking at policy and legislative frameworks, books, articles and government reports which provide a comprehensive perspective on past events, as in how they influence the present and how they will relate to the future.

The reason for selecting this design is because the research study looks at the evolution of the urban tenure system in South Africa, which involves the historical overview of the urban tenure system for blacks, past discriminatory laws that cemented their dispossession, landlessness, homelessness and tenure inequalities, and the remedial government's intervention to redress these inequalities of the past and the socio-economic impacts thereof.

### **1.9.2 Research methodology**

According to Williams (2013:1), research methodology can be defined as a process of discovering, interpreting, enhancing and developing standards to systematise measurements and to further the advancement of knowledge.

There are two types of research methodologies used to conduct empirical studies namely: qualitative and quantitative paradigms. Qualitative methodology has its philosophical roots in the naturalistic school of thought, while quantitative methodology focuses on counting events and on scientific experiments based on standardised measures (Newman and Benz, 1998; Paton, 2002), while Woods (2006:43) lists observation, interviews and documentary analysis or literature reviews as the main methods of qualitative research.

### **1.9.3 Literature review**

According to the study guide (2015:1), a literature review is an assessment of a body of research that addresses a research question. The researcher will review data held in books, journal articles, government reports, policy documents and other research papers in order to identify what is already known about the area of study, but also to identify any questions the existing research does not answer and thereby present a case why further study on the research question is required.

As stated previously, the data for this study is based on document analysis in relation to relevant policy and legislative frameworks, and to a certain extent on the theoretical framework of de Soto, who argues that land title programmes create an enabling environment for beneficiaries to use their properties as collateral for economic and investment opportunities. While many studies have been undertaken to date on land reform for both urban and rural scenarios, these have failed to focus on full ownership or secure tenure rights of households in formal pre-1994 black urban settlements.

### **1.9.4 Data analysis**

According to Patton (2002:3), data or content analysis is a method of analysing text from documents or interviews when conducting a research study.

In conducting this research, data analysis was undertaken to organise data in a logical and understandable way through data preparation and descriptive and inferential statistics.

### **1.9.5 Sequence of chapters**

In terms of the study's framework, this chapter (Chapter one) dealt with the background to the study as well as briefly describing what land reform and urban tenure reform programmes entail. In addition, the motivation for the study, the problem statement and the study objectives were dealt with in order to delineate the focus of the research topic. The chapter also highlighted the problem statement and research questions that form the basis for the research, and also guided the process towards an ideal research solution.

## ***Chapter Two: Historical Overview of Tenure Reform: African and International Approaches.***

Chapter two provides the theoretical framework in terms of Public Administration as a constitutional provision and various theories on urban land and property rights. It also defines concepts such as tenure rights, urbanisation and migration, and provides the international and African overview of land tenure reform, covering background, legislative framework, merits and demerits as well as the evolution of tenure rights in South Africa.

## ***Chapter Three: Research Design and Methodology***

This chapter outlines the research methodology and research design used to carry out this study, and further justifies why such a design and methodology have been undertaken. The chapter also looks at the value added by these tools to the objectives of this study. In terms of research methodology, a qualitative approach was adopted with document analysis being the predominant tool used to collect data.

## ***Chapter Four: Presentation of Findings and Discussion***

This chapter presents findings based on information collected through the analysis of government reports, policy and legislative frameworks, project performance reports, books and articles in order to contribute to the body of knowledge with regard to urban development and tenure reform in black urban settlements, such as Orlando and Zola in Soweto.

## ***Chapter Five: Conclusion and Recommendations***

Chapter five concludes the study and recommends measures required to address challenges and/or to accelerate the tenure reform initiative for Soweto households and other black urban townships.

### **1.9.6 Ethical considerations**

According to Shamoo and Resnik (2009:1), ethical conduct should reflect the researcher's character when conducting a research study and is characterised by good standards including caution, openness, confidentiality, responsibility and respectfulness.

In conducting this research study, the following ethical considerations will be made:-

- ☐ Presentation of actual figures in terms of project status, such as the number of properties claimed, number of title deeds issued, number of disputed properties and those still to be regularised, without manipulating the statistics based on public documents.
- ☐ The disparaging comments and reports by commentators and institutions critical to the democratic government's performance in terms of commitment to urban tenure reform will be repudiated with factual information without impugning their personal and professional integrity.



## **CHAPTER TWO: HISTORICAL OVERVIEW OF TENURE RIGHTS IN INTERNATIONAL AND AFRICAN COUNTRIES**

### **2.1 INTRODUCTION**

Land, its ownership and use has always played an important role in shaping political, social and economic processes not just in Africa but in all nations everywhere, the reason being that land dispossession and conquest, along with the use of discriminatory practices and economic exploitation have invariably precipitated negative consequences for the original inhabitants, who must then fight for the return of their freedoms.

Land tenure insecurities are still rife in Southern Africa, affecting labour tenants, farm workers and tenants of records in state-owned properties. In southern Africa, the land tenure system comes in two principal forms: customary and statutory tenure systems. The customary tenure system is governed by the unwritten traditional rules administered by tribal authorities, while the statutory tenure system is governed by common law and is supported by documentary proof such as title deeds registered with the Registrar of Deeds.

This chapter provides a general background of land reform programmes, starting by defining concepts such as land tenure rights, urbanisation and migration. In addition, it provides both a domestic and an international overview of land reform programmes with an emphasis on the South African context. It also deals with different dynamics and political milestones from pre-colonial times to the democratic era, as well as addressing land tenure insecurity for the black urban townships.

The theoretical framework used in this research study is focussed on urban tenure reform, as the issue of land rights is deeply rooted in a political and historical context, including land dispossession and discriminatory practices both in Africa and internationally. This is because land rights are linked to human rights, especially when it comes to previously excluded groups such as indigenous people and women.

With respect to literature, policy and legislative frameworks are predominantly reviewed, the reason being to demonstrate that when former colonial countries become liberated and free, the political dispensation changes accordingly, with newly elected governments then establishing institutions and developing policies and laws to remedy the past discriminatory practices, inequalities and injustices related to land tenure rights. The other literature reviewed demonstrates that land reform, despite being a noble programme, is affected by the dynamics of land use, land ownership and the tenure system, which have not always been compensated by appropriate reforms in policies, laws and institutions that govern land and property rights to achieve and ensure equity, efficiency and sustainability for both urban and rural land markets.

## **2.2 THEORETICAL FRAMEWORK**

The South African Constitution of 1996 is the supreme law of the country and regulates the state and government functions. In March 1991, the former President, FW De Klerk introduced a range of reforms in reciprocity to increased pressure for socio-economic and political transformation. As a result, a new policy and legislative framework was developed which abolished the racially-based laws, and provided for restitution of land dispossessed under apartheid. This included upgrading of security of black land holders and facilitating the establishment of black townships in former white areas to ease the burden of urban homelessness.

In developing the theoretical framework for this study, it is critical to cover Public Administration as it provides constitutional guidance on how state departments and government officials must operate, and the chapter also covers different theories about urban land tenure reform and associated rights.

### **2.2.1 Public administration**

According to Jipson & Paul (2011: 2), Public Administration is primarily concerned with the organisation of government policies and programmes as well as the behaviour of civil servants responsible for the execution of said policies and programmes. In addition, Du Toit and van Der Walt (1999:41) relate that Public Administration pertains to the provision

of services to the public by state departments and government officials in order to improve their general welfare and, in pursuit of this goal the officials are supposed to display ethical conduct and the departments concerned must follow due systems and processes accordingly.

Du Toit and van Der Walt (1999:44) further mention that since Public Administration enables senior government officials to perform their functions in providing a particular service, they are therefore assisted by the following processes which are relevant to the urban land reform programme:

### **Generic administration processes**

- **Policy making:** in an effort to redress tenure inequalities of the past, the post-apartheid government developed a remedial framework for the former black townships in the form of the Enhanced Extended Discount Benefit Scheme, which seeks to upgrade the non-secure tenure system of urban black households into full ownership rights.
- **Organising for Policy Implementation:** in preparation for the implementation of the urban tenure reform programme, the state had to develop a project team or a Directorate comprising of different yet complementary skills and competencies, such as town planners, civil engineers, mediators and conveyancers to facilitate the town establishment, dispute resolution and property registration processes.
- **Budgeting:** this relates to making money available for the implementation of the urban tenure reform programme, which is the state's remedial initiative to redress tenure inequalities of the past and entailed proper financial planning to ensure sufficient funding for activities to be undertaken for a specific period of time.
- **Determination of work procedures:** to ensure efficiency and effectiveness in the programme's implementation, systems and processes had to be developed to ensure proper use of allocated resources, optimal execution of activities and that project goals are achieved on time and in good quality.

- **Provision of control measures:** to monitor and ensure that there is no deviation from project plans and targets, optimum use of resources and compliance to systems and procedures.

### **The Constitution of the Republic of South Africa**

The South African Constitution of 1996 is the supreme law of the country and regulates the state and government functions. South Africa is a unitary state with some federal characteristics, meaning that power remains concentrated at the level of central government, while certain prescribed powers are devolved to provincial and local authorities.

The courts are not the only institutions that ensure enforcement of socio-economic rights, as the Constitution created a similar enforcement mechanism by requiring the Public Service Commission to monitor progress in the implementation of these rights.

### **Values of the Society**

The values related to the principles that political office bearers and officials must comply with in carrying out their duties, and which members of the public must also comply with in their dealings with government officials (Du Toit & van Der Walt, 1999:103-109).

Some of these values are relevant and applicable to the urban tenure reform programme, and are discussed below:

- Reasonableness and Fairness

In the project implementation, the intended beneficiaries are non-homogenous and thus the state department and officials must be fair and reasonable in the provision of secure tenure rights, irrespective of race, gender, origin and religion.

- Balance

All the households and individuals who had vested interest in the state-owned properties were given opportunities to present their cases and provide oral and documentary proof for entitlement. Based on the evidence and testimony submitted, it could then be

determined if such claimants were rightfully justified in being awarded full ownership of their property or not.

- Truth

In order for the programme to be truthful and to prevent corruption, government employees had to verify entitlement of households by looking at the council records, performing house audits and interviewing neighbours, as well as placing public notices in newspapers to solicit possible objections.

- Justice

In relation to justice, a quasi-judicial forum was established to deal with the housing disputes, allowing parties to present their case and to be entitled to legal representation. The adjudicator would then make his determination, and if the party was found to be aggrieved, he would notify an appeal within thirty days of the adjudications and the matter would be referred to the Appeal Panel.

The Appeal Panel, consisting of three independent adjudicators would hold an appeal enquiry, in which they could call witnesses, listen to any other evidence or seek clarification on certain issues. At the conclusion of the appeal proceedings, the three adjudicators would deliberate and make their determination.

If a person still felt aggrieved after the appeal was finalized, he or she could possibly decide to take the matter to the Supreme Court for review.

- Thoroughness

The sixteen steps or procedure for the process followed in the transfer of housing was devised to ensure thoroughness, transparency, openness and efficiency in the implementation and completion of the project, from receipt of applications to verification, dispute resolution and lodgement with the Registrar of Deeds until the property is registered.

The determination of the identity of a rightful tenant of a particular property would take place through confirmation through neighbours and local structures.

- Efficiency

Reports would be submitted on a monthly basis to monitor and ensure that expenditure relates to the execution of approved activities and also in relation to projected milestones in terms of time, cost and quality.

### **Importance of Public Administration**

According to Jipson and Paul (2011:10-11), Public Administration is an important mechanism for preserving and promoting the welfare of the community, as the state provides critical services such as housing with secure tenure, health, safety and security. They further argue that in a country with a history of discrimination and inequality, Public Administration may be viewed under two headings, namely: the people and democracy.

### **Public Administration and the People**

Public Administration is important in the lives of people as government has branches and departments that provide a particular service free of charge and upon which they depend, such as the Department of Human Settlements which provides housing and secure tenure.

### **Public Administration and Democracy**

Modern democracy has ushered in the concept of the welfare state, as well as increasing the scope of state intervention and activities by correcting the effects of discrimination and inequality. In the South African context, the post-apartheid state has moved actively to provide people who were systemically disposed of urban property with urban land, housing and secure tenure.

### **Batho Pele Principles**

According to Du Toit and van Der Walt (1999:109-110), in an effort to transform public service delivery to ensure efficiency and effectiveness of public institutions, and as an attempt to redress the imbalances of the past while still maintaining services to all levels of society, the Batho Pele Principles were conceptualised, and are listed as follows:

consultation, service standards, access, courtesy, information, openness and transparency, redress and value for money.

All these principles are applicable to the transfer of housing project. Furthermore, as already stated, the sixteen steps or procedure for the transfer process was devised to ensure thoroughness, proper consultation, transparency, openness and efficiency in the implementation and completion of the project, from receipt of applications right up until the final property registration.

This means that a decision or activity undertaken must be well considered and carried out in an economical way within the planned timeframe to ensure that the quality thereof is not compromised. Extreme attention to detail and accuracy hence becomes of paramount importance, thus reports should be submitted on a monthly basis to monitor and ensure that expenditure relates to the execution of approved activities, and also in relation to projected milestones in terms of time, cost and quality.

### **Public Service Commission**

According to Section 10 of the Constitution (1996:111-113), there is only one Public Service Commission in the Republic of South Africa, and it should be independent and impartial in performing its duties without favour, fear or prejudice.

The Public Service Commission is empowered by the Constitution to investigate, monitor and evaluate the organisation and administration of the Public Service of the Republic of South Africa, its mandate being to evaluate and monitor progress or the lack thereof of government service delivery programmes, as well as to enforce compliance with the following principles and values of Public Administration as set out in the country's Constitution.

In terms of the transfer of houses, monthly project performance reports are submitted to the National Department of Human Settlements. These are then consolidated with those of other provinces, following which they are submitted to the Auditor General and Public Service Commission. The report covers the number of applications received, number of properties transferred and in dispute resolution, and the cost implication per each activity.

### **2.2.2 Hernando de Soto's views on land or property rights**

According to McKinney (2007:17-18), Hernando de Soto in his book entitled *Mystery of Capital* asked the following question: "Why does capitalism thrive only in Western countries, as if it is enclosed in a bell jar?" His response and conclusion is that it is because the poor are not given the means to produce capital, and he further argues that if the poor were to save and accumulate assets, they would unlock their economic potential. He claims that the major hindrance in this regard is that their assets are not formally owned, thus the limitations in the ability to trade those assets, use them as collateral and sell shares therein.

In the brief review of the development of property rights in the United States, de Soto points out the ways in which voluntary associations of farmers would keep track of property ownership and how the formal legal system would accept and make them *de jure*. He also notes how the integration of the formal and informal sectors makes it possible for the latter to be recognised as viable business, because if small farmers, for example, organise themselves and operate as co-operatives, they are thereby able to use their assets productively in generating more income and expanding their business.

Hernando de Soto (McKinney 2007:17-18), with his Institute for Liberty and Democracy conducted a pilot study on the titling programme of about 1,2 million households in Ecuador and Argentina and the following findings were made:

- People placed a higher value on their properties once they received their title deeds.
- Households invested more on their properties.
- The fertility rate decreased.
- People started to work away from their homes for more hours a week.
- There was a small and insignificant increase in the cost to access credit.

It remains to be seen whether the South African poor, should they be beneficiaries of such a titling programme, would use their properties as collateral for business and other loans? Would de Soto's theory be applicable to the South African context?



### **2.2.3 Fernandes' theory**

According to Fernandes (2003: 238-239), the challenge facing governments in any developing country is in addressing the concept of legal recognition of property rights, particularly real property rights. This is because it is the private ownership of land in urban areas that has been the most difficult to deal with, given the limitations, delays and even failure by the state to give communities title deeds. As a result, households only use their assets as social assets for their families, instead of as economic assets by renting them out to generate income or use as collateral for commercial institutions in order to start businesses.

This commodification of property has been detrimental to the concept of property as a social function, thus the challenge will be to have urban planning and land use and environmental laws to increase the scope for state intervention relating to individual property rights. A further challenge is to ensure that effective legislation is enacted at all levels of government to ensure the democratisation of land acquisition or some form of access to urban land by the poor, as well as economic restructuring in this regard to allow affordable access to land and housing for the urban population.

Fernandes (2003:232), in his chapter on "Illegal housing law, property rights and urban space", discusses three different paradigms reflecting different approaches to the nature of the urban development process, of state action and of the relation between the urban development process and state action.

#### **The Civil Law Paradigm**

In many developing countries, the civil law paradigm is characterised by the liberal and individualistic approach where state intervention is minimal regarding the use and development of urban land. The law essentially governs relations between individuals and administrative reactions or approvals to ensure the mitigation of risks associated with ownership disputes and land under-utilisation. In general, unregulated market forces are permitted to control urban development.

## **The Public Law Paradigm**

The Public Law approach emphasises that the state has a responsibility to protect the environment for the present and future generations, and the legislative measures are used to regulate spatial planning and land use management. Linked to this is a critical assessment of the politico-economic dynamic of the urbanisation process.

### **The Relationship between Law and the Urbanisation Process Paradigm**

This relationship basically deals with the relationship between the official legal system and the proliferation of informal rules.

The above statement implies that urban law is one of the instruments that may be used as a progressive strategy aimed at the democratic administration of cities in the informal settlement context, which requires consideration to be given to the importance of law as a vehicle for the urban development process, upgrading of tenure rights and social change.

## **2.2.4 Theory of land reform: Zarin and Bujang**

According to Zarin and Bujang (1994:1), land is one of the most valuable natural resources of any country and represents the principal form of wealth and the main source of economic and political power. They further argue that when the defects of the tenure system affect socio-economic development, land reform is usually necessary to reorganise the institutional framework of tenure structures and eliminate impediments to progress.

It is traditionally and generally accepted that land reform means the redistribution of property rights for the benefit of the poor, landless peasants, small farmers and tenants.

Zarin and Bujang further opined that in terms of recent literature, the argument presented is that social and economic goals should not be a source of conflict, but must rather be seen wielded together in the land reform approach to development in general.

They also suggested that there should be institutional changes and restructuring in an attempt to make the land tenure system consistent with the overall requirements of

economic development. Furthermore, in terms of challenges, they say that despite the fact that land reform may be politically desirable, it is nevertheless important that challenges are thoroughly dealt with. For example, while smallholdings may be created through such a process, that does not guarantee a productive land system nor a higher rate of growth. Mere redistribution of land does not necessarily make farm workers more efficient through the incentive of ownership alone, and as a panacea they suggested that the state must consistently provide support and guidance to the land reform beneficiaries.

### **2.2.5 UN Habitat 1998 – Global Shelter Strategy to the year 2000**

The UN Global Shelter Strategy to the year 2000 aimed to provide adequate shelter for all, and implicit in its aims and objectives was a human rights dimension to housing. The crux of the strategy was based on the idea that all nations have an obligation in some way to provide shelter and security of tenure, whether in the form of setting up appropriate housing agencies and ministries, allocation of funds and/or devising appropriate housing policies and programmes.

#### **Habitat Agenda (1996)**

The Habitat Agenda of 1996 emphasised the importance of the urban law, resulting in it being elevated to a critical position regarding urban development.

The Habitat Agenda had the following aims:

- ☐ Provision of the legal security of tenure and equal access to land for all people, including those living in poverty and women.
- ☐ Ensuring a transparent, comprehensive and accessible system for transferring land rights and legal security of tenure.
- ☐ Protection of vulnerable groups against evictions contrary to law, and being cognisant of human rights.

### **2.2.6 The Istanbul Declaration**

The Istanbul Declaration provides an international policy and legal framework for policies and practices related to urban land tenure.

The Istanbul Declaration sets out two principles, namely:

- A commitment to the full and progressive realisation of the right to adequate housing as provided for through international instruments by ensuring legal security of tenure, protection of the poor and other vulnerable groups from discrimination, and equal access to affordable and adequate housing for all persons and their families.
- The necessary expansion of the supply of affordable housing by enabling markets to perform efficiently and in a socially and environmentally responsible manner, and enhancing access to land and credit and assisting those who are unable to participate in housing markets.

## **2.3 DEFINITIONS**

### **2.3.1 Land tenure rights**

Land Tenure Rights can be defined as the relationship between individuals or groups with respect to land, be it legal or customary. These rights are in terms of use, occupation, control and transfer and are enforceable by a Court of Law or by structures of the community (Land Tenure and Rural Development 2015:1).

### **2.3.2 Urbanisation**

Urbanisation can be defined as a process whereby a population shifts from rural to urban areas in search and pursuit of socio-economic opportunities such as employment, health and social facilities. However, urbanisation can also bring stress upon the land, for example more demand for water, housing, transport and employment (Wikipedia 2015:1).

### **2.3.3 Migration**

Migration can be defined as a process whereby people move from one place to another, whether voluntary as in pursuit of socio-economic opportunities, or involuntary through displacement due to war, poverty, slavery and human trafficking (Wikipedia 2015:1).

## **2.4 APPROACHES TO TENURE REFORM PROGRAMMES**

Land and land tenure issues have been and will continue to be high on the policy agenda in many countries, both internationally and in Africa, especially following independence with new governments coming in to power and attempting to redress the inequalities and injustices of the past.

### **2.4.1 Tenure reform approaches of international countries**

For the purpose of this study, two international countries have been selected, namely Philippines and Brazil. This is because both countries are characterised by informal settlements or slums, and land reform programmes are viewed as a panacea with which to achieve socio-economic development. Their Land Reform Programme is seen as a remedial tool, and the security of tenure and a right to housing is recognised.

#### ***2.4.1.1 Tenure reform programme in Philippines***

##### **Background**

According to the Agrarian History Guidebook (2013:2), the Land Reform Programme in Philippines provided important lessons in self-determination of communities, with their national struggles throughout the years eventually paying off.

The Philippines comprises a land area consisting of 500 000 square kilometres and the population reached about 66 million by the mid-1990s. Most of the poor urban communities reside in the metropolitan Manila area and other highly urban areas, with more visible poverty in the informal settlements. As a result of the new political dispensation in 1986, a new Constitution was adopted in 1987, amidst cries for land reform and respect for human rights.

### **Policy and legislative Framework: The Philippines Constitution of 1987**

According to the Agrarian History Guidebook (2013:4), the Philippines Constitution of 1987 has the following two critical provisions in relation to land and housing:-

- The state must implement the urban land reform and housing programme, and must provide access to employment opportunities for the underprivileged and homeless citizens.
- The recognition of the right to housing, inclusive of the rights of women to housing, and the right to suitable land and provision of acceptable basic services.

### **The Urban Housing Act**

The Urban Housing Act provided a mechanism to realize the constitutional right or guarantee to housing. The Act emphasised the development of an efficacious strategy to implement urban land reform dealing with the upgrading of slums, and proposed that demolitions and evictions should only be done as a last resort.

### **Integrated Shelter and Finance Act**

The Integrated Shelter and Finance Act was aimed at establishing a national framework for housing and urban reform, which entailed the buying of privately owned properties from landlords and regularising qualifying tenants.

### **Criticism of the Philippines Land Reform Programme**

According to the Philippines Land Tenancy and Land Reform Report (2015:1), the programme was criticized by both the landlords, who argued that it went too far, and the peasant organisations, who said too little was done and achieved, as details of the programme were left to the land owner-dominated Congress and the programme was therefore doomed to failure. On the other hand however, the government saw the programme as being successful in the first three-year period, as between 1987 and 1990, about 430 730 hectares were distributed at a cost of 14.2 billion Philippine peso.

### **2.4.1.2 Tenure reform programme in Brazil**

#### **Background**

According to a Property Rights and Resource Governance article (2015:1), insecure tenure, inadequate land distribution and inadequate access to land by the poor were viewed as contributory factors to land degradation, rural poverty and migration to crime-ridden slums and shantytowns in urban areas.

Brazil is the largest and most populous country in South America, with an estimated population of 170 million people and about 80% of citizens living within the metropolitan urban areas comprising of 'favelas' or informal settlements on both public and private land. Prior to 1998, urban policies in Brazil were dictated by property developers with civil society having no voice, and consequently illegal settlements started springing up on the peripheries of Brazilian cities.

#### **1988 Constitution**

The establishment of the Constitutional Congress in 1986 by the Brazilian Parliament eventually led to the enactment of the Constitution in 1988, which emphasised the recognition of land ownership as a fundamental right and the need for regularisation and upgrading of illegal settlements. Inherent to this was an approach to urban land access and curbing property speculation. The Favelas Bairro Programme, which was implemented in Rio de Janeiro was also developed. This programme incorporated social housing for the regularisation of land ownership and the upgrading of infrastructure, the installation of essential services such as provision of water, sewerage and health services, and the availability of electricity in public areas for leisure and sports. The programme's beneficiaries were those residing in the Favelas and the low-income population, and people removed from their places of residence were provided with alternative accommodation. The Constitution provided for various tenure systems including individual and collective ownership as well as both formal and informal leases (Property Rights and Resource Governance, 2015:4).

### **Implementation of the Brazilian Land Reform Programme**

Pursuant to the Constitution, Brazil began numerous programmes to facilitate access to land for the poor and landless. This took place through state-led approaches involving expropriation and redistribution of unproductive land settlement on government land, market-assisted land reform giving subsidised loans to the landless for purchase of farms, and tenure regularisation for indigenous and Afro-Brazilian communities.

A tenure upgrading programme was also implemented, the aim of which was to ensure the promotion of secure tenure rights that would be registered with the Registrar of Deeds to protect the vulnerable against evictions and housing disputes (Property Rights and Resource Governance article, 2015:4).

### **Criticism of the Brazilian Land Reform Programme**

Despite the government's commitment and political will to accelerate the Land Reform Programme, issues remain for the landless peasants as large farms continue to displace smallholders who lack formal land titles, resulting in social groups pressurising the government to address the situation (Property Rights and Resource Governance article, 2015:2).

#### **2.4.2 Land reform programme by African countries**

The African approaches to land reform programmes will relate to the South African, Rwandan and Zimbabwean context. The common factor among African countries is that tenure reform must address a range of problems which arose from colonisation and dispossession, as the dual, racially-based system of land rights introduced by colonial powers still prevails in Southern Africa. In addition, such land reforms must also deal with overcrowding in communal areas, overlapping land rights and cases of exploitation by traditional leaders.



### ***2.4.2.1 The land reform programme in South Africa***

#### **Background**

The South African Land Reform Programme will be dealt with in detail in the next chapter as part of the post-apartheid government's policy and legislative framework and remedial programme.

According to Sibanda (2001:3), South Africa's land reform programme was proposed by the African National Congress (ANC) in its Reconstruction and Development Programme (RDP) prior to becoming a ruling party, as it saw land reform as a panacea to redress the injustices of forced removals and the historical denial of access to land for the local African population. The ANC therefore considered land reform as a means for ensuring security of tenure, eliminating overcrowding and for supplying residential and productive land to the poorest section of the community.

When the ANC became the ruling party in 1994, land reform became an integral part of the Constitution, particularly in the Bill of Rights, which was designed to redress the racial imbalance in land holding and secure land rights of the historically disadvantaged people.

#### **South African Land Reform Programme**

The Land Reform Programme comprises three aspects, namely: - land restitution, land redistribution and land tenure reform (Sibanda, 2001:3).

#### **Land Restitution Programme**

The Land Restitution Programme deals with claims lodged in terms of the Restitution of Land Rights Act, 22 of 1994, under which a person or community dispossessed of property after 19 June 1913, as a result of racially discriminatory laws and practices, is entitled to lodge a claim for restitution of the property or comparable redress. The Department of Rural Development and Land Affairs and Land Claims Commission encourages parties to amicably resolve any issues in this regard, but if this is not possible, the Land Claims Court will adjudicate the matter, with fairness and justice as guiding principles as restitution is rights based, and the law clearly states or provides for either

restoration of land rights or cash compensation to the victims of forced removals (Sibanda, 2001:3).

### **Land Redistribution**

Land redistribution is concerned with availing land for agricultural production, settlements and non-agricultural enterprises, with the emphasis on providing the poor and disadvantaged with land for housing and farming purposes. Redistribution is not rights based and people wanting land must apply for government grants, which are used to acquire farms offered for sale on the market, such as the willing buyer, willing seller system. However, the expropriation of land in the public interest is also possible, but compensation must be paid to the owners thereof (Sibanda, 2001:3).

### **Land Tenure Reform**

The Land Tenure Reform Programme is mainly intended for labour tenants, farm workers, rural households living on privately owned land, and people living in the former homelands. It is aimed at strengthening the rights of people whose land tenure is insecure as a result of discriminatory laws and practices of the past (Sibanda, 2001:3).

### **Evaluation of the Land Reform Programme in South Africa**

Land Reform as a South African Government programme seeks to redistribute land in order to address the skewed patterns of past land ownership, when 80% of the population was squeezed into the townships and former homeland areas. In evaluating the efficiency and efficacy of the South African Land Reform Programme, Lahiff (2010:1) is very critical and mentions that land reform has fallen short of targets and expectations because less than 7% of land had been redistributed by 2013, and at that pace there is no possibility that the one third target will be achieved by 2025. He also argued that most of the land transferred remains unused due to lack of capital and skills by the new owners, and that this is greatly exacerbated by the imposition of unworkable plans by state agents coupled with lack of post settlement support. Furthermore, he mentions that the lack of suitable markets means that few of the land reform beneficiaries are progressing into sustainable farming enterprises.

According to *Sunday Independent* (2016:4), Dikgang Moseneke, a retired Deputy Chief Justice of the Constitutional Court, lamented on the slow pace of land reform. Moseneke also said it was unbearable for him to see people still living in squalled squatter camps without running water and sanitation, while the state owns huge areas of land which is not developed. He therefore recommended that the state should conduct a land audit and commence with redistribution and land expropriation in order to speed up the process.

#### **2.4.2.2 Land Reform Programme in Rwanda**

##### **Background**

In Rwanda, land has long been a source of dispute and conflict, compounded by the social unrest which resulted in the 1994 genocide. Subsequent to the genocide there was lack of clarity over the land status and rights to land, with land owners returning to the country to find their land occupied by others (Rwanda Case Study, 2014:2).

##### **Government's Plans on Land Reform**

According to the Rwanda Case Study (2014:2), in the process of rebuilding the country, the Rwandan Government recognized land as a critical issue in the nation's long-term development; as a result the following policy and legislative frameworks were developed:-

1. The New Constitution
2. The National Land Policy of 2004
3. The Organic Land Policy of 2005
4. Poverty Reduction Strategy

The purpose of the policy and legislative frameworks was to identify procedures for land tenure and titling, registering and administering of land titles, and coming up with tools to consolidate, and develop, innovations and platforms for community mobilisation, accountability and participation. It also provided for equal rights for daughters and sons to inherit property belonging to their parents and protection of women's property rights for those married in community of property.

The Rwanda Land Reform Programme was fragmented into two phases:-

Phase 1: A three-year programme, from November 2005 to May 2009, which aimed to:

- ☐ Improve tenure reform, especially for women;
- ☐ Facilitate economic development;
- ☐ Encourage good land practice; and
- ☐ Contribute significantly to land conflict management.

Phase 2: Implemented from February 2010 to August 2013, which aimed at:

- ☐ Registering all land in Rwanda for the first time, which entailed surveying all land parcels and providing land titles to all rightful claimants; and
- ☐ Provision of capacity building support, training and expertise in land administration.

### **Importance of Communication with Beneficiaries**

Innovative and effective communication strategies were critical to ensure that the general public was aware of the programme, as to how it works, how to make a complaint and how they would be affected. The fusion of innovative and traditional communication proved effective in disseminating information, as by 2012 the majority of Rwandan people were aware of the Land Reform Programme in terms of procedures to be followed, legal implications as well as the possible effect on themselves and their country (Rwanda Case Study, 2014:14).

### **2.4.2.3 Land Reform Programme in Zimbabwe**

#### **Background**

The inequitable system of land holdings in Zimbabwe was established during the colonial era, as Africans were relocated from their traditional land to reserves, later known as communal areas. In 1939, through the Land Apportionment Act, the white population was allocated land of superior quality to the original black inhabitants.

In the Zimbabwean situation, according to the 1979 Lancaster House Agreement, in terms of reaching equitable land distribution and promotion of African land ownership, there was an understanding that a large portion of the land reform programme would be financed through international resources because the achievement of political independence in 1980 did not bring any radical changes regarding the inequitable distribution of land between African peasants and white farmers. In 1981, Zimbabweans started to complain and argue with the Western governments that the provision of adequate funds for land purchase was not forthcoming as promised in 1979 by the United States of America and United Kingdom.

After years of lack of funds for land reform as per the Lancaster House Agreement, the failed commitment of “willing buyer, willing seller” approach which eventually expired in 1990, and the lack of a planned efficacious strategy to orderly deal with the land question, eventually resulted in chaotic land invasion and breakdown of the rule of law (Property Rights and Resource Governance: 2013:4).

### **Policy and Legislative Framework on Land Reform**

According to Property Rights and Resource Governance (2013:6-8), late in the 1990s the Zimbabwean Constitution was amended in a way that permitted the compulsory acquisition of land without compensation, which was vehemently opposed by the opposition and the international world. Legislation dealing with land rights in Zimbabwe included the following:-

- Communal Land Act of 1982, which vests ownership of communal lands to the state,
- Land Acquisition Act of 1992, which allows land to be expropriated by the state for redistribution,
- Agricultural Land Settlement Act; Agricultural Corporations Act of 1997; Regional Town and Country Planning Act; Land Survey Act, and Deeds Registry Act.

The ruling ZANU-PF then adopted a fast track land acquisition and distribution programme, and consequently groups of war veterans, the unemployed and landless youth invaded commercial farms, destroying property and physically confronting not only the white owners but also the black farm workers. An effort to challenge the new laws, policies and land invasions in court was unsuccessful, and there was rife suspicion of political interference and that the judges were partial in their decisions.

The resettlement of land was classified into two categories, namely:-

- The A1-Land, which was land allocated in villages and in small, self-contained parcels up to five hectares;
- The A2-Land, which was intended for commercial farming and allocated to people who were able to demonstrate that they could be viable farmers.

There were various tenure types in terms of land, and these included freehold ownership, occupancy rights to land in communal areas and leases granted by government through various land redistribution schemes.

### **Evaluation of the Zimbabwean Land Reform Programme**

According to Property Rights and Resource Governance (2013:9-10), from 2011 land rights in Zimbabwe were highly insecure, and the remaining commercial farmers lived in fear that their farms would be invaded anytime and they would possibly be evicted. Furthermore, because land acquisition was forceful, and in contrast to the law, the new owners could not be registered by the Registrar of Deeds as there was a legal requirement that the displaced farmers should first attest their signatures as an indication of wilfully disposing and ceding their rights to the new occupants.

The relevant authorities had made pronouncements that gender equality should be an integral part of the land reform programme, but in reality gender discrimination continued under a veneer that the Constitution permitted discrimination against women in land matters in reference to customary law.

The administration of land in Zimbabwe lacks transparency, a clear assignment of authority and also capacity, as the state intervention of reclaiming and re-allocating land was viewed as mere tools of the corrupt politicians, who are above the law (Property Rights and Resource Governance 2013:9-10).

## **2.5 EVOLUTION OF TENURE RIGHTS IN SOUTH AFRICA**

According to Winsborg (2006:56-58), there are three interesting critical points in relation to land ownership and dispossession in South Africa:

1. Between the 1850s and 1914, he estimates that about 566 000 square kilometres of land was colonised, which is equivalent to half the current South Africa.
2. He mentions that the 1891 Constitution of the Orange Free State banned land ownership by black people, yet granted land ownership rights to coloureds as they were viewed as superior to Africans by virtue of being a product of miscegenation between black and white. However, their residential status was dependent upon their current occupation of land as well as possession and display of good and civilized conduct.
3. He categorised the land tenure system in South Africa into four phases, namely:
  - Pre-colonial phase, where different African tribes enjoyed different tenure systems from individual to family and group.
  - The colonial quest, which was between 1652 to the 1800s and characterised by the physical occupation by the European settlers and exclusion of the indigenous people.
  - The Roman Dutch Law type of ownership, characterised by economic non-viability and exclusion.
  - The legalisation and consolidation of dispossession and exclusion from the ownership institutions through the 19th century legislation, such as the Land Acts of 1913 and 1936.

### **2.5.1 Phases of the evolution of tenure rights and systems in South Africa**

In this section the evolution of tenure rights in South Africa will be discussed in terms of five phases, namely: Pre-colonial phase, Colonial phase, Segregationist phase, Apartheid phase and the Transition phase, which will also reflect on the dynamics of the urban black townships.

#### ***Pre-colonial phase: pre-1652***

Prior to the arrival of Europeans, land was communally owned by African communities, and the levels of status and wealth of households were dependent on the individual's ability to attract people that would assist in integrating livestock and crop production. The access to land was guaranteed to all members of the community and "visitors" were welcome in a spirit of Ubuntu. African communities used to share their resources but also viewed land as sacred because that is where they would bury their ancestors whom they relied upon for spiritual guidance and appeasement (Winsborg, 2006:56-58).

#### ***Colonial Phase: 1652-1909***

According to Winsborg (2006:56-58), the earliest land tenure reform dates back to the conquest of Africa by Europeans seeking to extract resources and force political domination, and who argued that African communities cannot claim the land as theirs without producing proof of ownership.

Colonisation took place through various methods, including military conquest, unjust treaties and unequal trade and development, with European settlers perceiving Africans as ignorant of land ownership concepts. As a result, colonial governments alienated communal lands from their original owners and handed it over to white settlers on the basis of freehold tenure, introducing a new dimension to land ownership mainly through privatization. This was meant to provide colonial settlers with supreme rights of access for owning land and natural resources, and eventually Africans were also removed from high potential agricultural areas and resettled in the worst land, their rights being held in trust by state institutions which gave few Africans any legitimate authority.



The pain and suffering caused by these conquests and violent land dispossession that consequently denied African land ownership rights is well captured by a Xhosa traditional leader in the former Transkei, Chief Meliqili in his communication with Mr Nelson Mandela. During a traditional graduation ceremony of young male initiates, he lamented how the loss of land had pervaded the community's sense of economic, political and physical marginalisation, as initiates would be graduating to manhood and expected to work on their ancestral land for taking care of their families, yet political and economic circumstances would instead force them to go to the cities and work in the mines and industries for the upliftment of white people (Wisborg, 2006:65).

### ***Segregationist Phase: 1910-1948***

According to Hodson (2014:4), before South Africa became a union, there were virtually no statutory restrictions on the acquisition of land by Africans. The land would instead be registered in the name of the Secretary of Native Affairs as trustees, and Africans would only be entitled to occupation and land use, with details of these transactions not even being divulged to them as "purchasers" of the land.

When South Africa became a union in 1910 following an all-white Convention held in 1908 and the promulgation of the South Africa Act of 1909, which unified the colonies and republics together with the provision that it remains a British territory but governed by the Afrikaners, Louis Botha became the first Prime Minister and the four colonies became provinces. Political rights were almost entirely restricted to the white population who were enfranchised in the Transvaal, Orange Free State and Natal, though in the Cape property-owning blacks were allowed to vote, but only for white candidates and the blacks' franchise being limited to the Provincial Council. It must be noted that during this period, various racist laws were promulgated which took land and political rights away from Africans in Natal, Transvaal and Orange Free State (Separate Development of Races, 2003:29).

Subsequent to the unionisation of South Africa, various discriminatory laws were enacted such as the Land Act of 1913, the Black (Urban Areas) Act of 1923, the Slums Act of

1933, the Development Land Act and Trust Act of 1936 and the Native Administration Act of 1927.

In this section these discriminatory laws will be briefly discussed and then dealt with in detail in the next chapter, which will be dealing with the Policy and Legislative Framework developed and promulgated pre- and post-1994.

### ***The Native Land Act 27 of 1913***

The Native Land Act 27 of 1913 effectively prohibited black people from owning land, limiting African land ownership to the designated reserves. The effect of this was crippling for the people whose livelihoods depended on land for farming and cattle, and whose entire culture and society were associated with the land.

This Act laid a foundation for apartheid and territorial segregation, and for the first time it formalised limitations on black land ownership, and also introduced ethnic differentiation based on the mistaken belief that differentiation between dissimilar races was fundamentally desirable (Separate Development of Races, 2003:30).

In 1914, the leadership of the ANC formed in 1912 sent a delegation to London to ask the British government to intervene with regard to the Native Land Act, arguing that it created a foundation of modern discrimination by restricting black land ownership and possession to a very small part of their land. However, the Colonial Secretary told them there was nothing he could do, as their problems would have to be addressed in South Africa and by the South African government (Separate Development of Races, 2003:30)..

Mr Sol Plaatjie, the Secretary General of the ANC was very vocal regarding resentment of the Act and its implications, arguing that it would reduce the African people to a state of serfdom and that they had become pariahs in the land of their birth. He sent delegations and submissions and requested time to facilitate discussions regarding the Bill among the African communities, but it was hurriedly passed into law without consideration of his request (History: Apartheid Roots 2014:2).

Furthermore, the ANC (2015:1-2) argued that the purpose of the Native Land Act of 1913 was well captured by the report of the Natives Land Commission in Pietermaritzburg in 1916, which said the Act was intended to:

- I. Deprive the Natives as people of their freedom to acquire more land in their own right;
- II. Restrict or limit a right to bargain mutually on even terms for the occupation of or settlement on land;
- III. Reduce by gradual process and by artificial means the Natives as a race to a status of permanent labourers or subordinates for all purposes and for all times, with little or no freedom to sell their labour by bargaining on even terms with employers in open labour markets either in agricultural or industrial centres;
- IV. Limit all opportunities for their economic improvement and independence; and
- V. Lessen their chances as a people of competing freely and fairly in all commercial properties.

Marx and Rubin (2008:4) additionally argued that the situation was further complicated by the promulgation of the following discriminatory policy and legislative frameworks, which denied blacks land and secure tenure rights through Acts such as the following:

***Native (Black) Urban Areas Act 21 of 1923***

The Native (Black) Urban Areas Act 21 of 1923 brought about the separate areas of occupation for blacks in the cities, and was used for the influx control mechanism and served as the basis for the establishment of the so-called black townships. The Act also prohibited blacks from residing in “white” urban areas, as they were only reserved for the white population. The residential status of blacks was as a mere labour-resource to service white companies and industries, hence they were required to always carry pass books as verification that they were permitted in urban areas. Failure to produce these pass books when asked would result in immediate arrest and being sent back to the rural areas (Marx and Rubin 2008:4).

This Act also empowered Municipal Authorities to secure and provide land for the development of townships where African labourers and their families would reside, but nevertheless still regulated through the municipal permit and influx control system. Municipalities were also empowered to establish separate revenue accounts for income extracted from the native locations which would finance the upkeep and improvement of these locations. Also known as black townships, these areas were not intended for economic activity nor even to be comfortably habitable, but were merely created as urban reservoirs marked by row houses to enable easy police patrols (Wikipedia, 2014:1).

### ***The Black Administration Act No. 38 of 1927***

According to Seriti (1987:25), the Black Administration Act No. 38 of 1927 was aimed at effectively controlling and managing the affairs of the black population. The Act also authorised forced removal of blacks as the then Governor-General would define the boundaries of a tribe's territory and could alter it at any time he deemed fit, including ordering the arrest of those resisting removal.

Any orders issued by the Governor-General had serious legal implications, as when an order affecting a tribe or a black community was issued, a copy thereof had to be served on the chief or chairman of the community authority at a public meeting convened for the purpose, and if neither of them were present, it could then be served on a tribal authority member or community authority member who was present. A copy of the order could be served by affixing it to the entrance of the chief or chairman of the tribal authority's residence so that it could be conspicuously seen by the affected community. Failure to comply with the order was a punishable criminal offence as even the magistrate could authorise a policeman to enforce compliance thereof (Seriti, 1987:24).

### **The Slums Act of 1933**

A slum can be defined as a squalid and an overcrowded area, predominately inhabited by poor people or those of low social status, and then purpose of the Slums Act of 1933 was to enforce the demolishment of the multi-racial areas, and to segregate different race groups as to ensure that black people are contained and controlled into areas that are socially degraded, economically shunned and politically suppressed (Marx and Rubin, 2008:4).

### ***The Native Administration Act No. 9 of 1937***

The Native Administration Act of 1937 strictly prohibited Africans from acquiring land in urban areas; however, due to the dependence of white industries on cheap black labour, African urbanisation became inevitable and led to the mushrooming of informal settlements such as Orlando, which were characterised by overcrowding and poor living conditions (Segregation Legislation Timeline, 2014:2).

### ***The Housing (Emergency Powers) Act of 1945***

The Housing Act of 1945 empowered the Minister through the Housing Boards to expropriate freehold land and construct matchbox houses, but also to build houses in townships whose tenure system was limited to rental. A classic example was the forced removal of black people from Sophiatown and their relocation to Meadowlands. It was also clearly specified, as set out in the national legislation, that township housing should be in the form of matchbox houses and hostels, which were funded by the central government but were unequal and race-based (Segregation Legislation Timeline 2014:1).

### ***Apartheid Phase: 1948-1990***

According to Wikipedia (2014:10), when the Nationalist Party won the national elections in 1948, Dr D.F. Malan became the Prime Minister and the existing segregation policies were further reinforced and institutionalised through the legal system of apartheid. This was characterised by denial of human rights and the population became more racially segregated in all aspects of life.

The Apartheid Legislation (2014:1-3) further states that the laws established under apartheid combined earlier segregation laws and customs into a new comprehensive code of racial statute, and had as its main aim the establishment of legal separation and white supremacist rule. The result of this was to legally affect all aspects of life for black people, including land ownership, freedom of speech and association, freedom of movement, freedom to vote, and constitutional rights in terms of residential properties.

The following discriminatory laws were promulgated during the apartheid era to perpetuate and edify the denial of the land tenure rights of the black population:

### ***The Group Areas Act of 1950***

According to Apartheid Legislation (2014:6), the Group Areas Act of 1950 further institutionalised and reinforced segregation as it forced the physical separation of racial groups by creating different residential areas for different races and further institutionalisation of inferior tenure rights for non-whites in the form of a 30-year lease and permit system. This led to the forced removal of people living in “wrong” areas, such as Sophiatown, New Clare and areas such as Soweto. This Act provided for the President to set out specific rural and urban areas exclusively for the ownership and occupation of members of a particular racial group, for example Soweto for Africans, Eldorado Park for Coloureds and Lenasia for Indians. As a result, the Act contributed to terminating the harmonious, non-racial ambiance of areas such as Sophiatown, where communities would live across colour lines in harmony with each other. This act was also aimed at reducing African urbanisation to avoid the “threatening characters” of non-whites within the urban periphery.

### ***The Bantu Authorities Act No. 68 of 1951***

The purpose of the Bantu Authorities Act of 1951 was to establish self-governing black homelands and regional authorities where black South Africans could be pushed from urban areas to these states which were economically non-viable and dependent on white South African citizenship and political rights. It was anticipated that blacks would stay in

these areas along tribal lines with a common culture and language (Apartheid Legislation 2014:6).

### ***The Black (Native) Laws Amendment Act of 1952***

The purpose of this Act was to narrow the definition of permanent residents in towns, as in terms of Section 10 of the Act this was to be limited to those who had been born in a town and had lived there continuously for not less than 15 years, or who had been employed there continuously for at least 15 years. As a result, the South African black population was forced to carry identity documents known as passes and were prohibited from staying in urban areas longer than 72 hours without permission. Later, this system was extended to black women as well, which resulted in widespread protests by women, for example the Women's March in 1956 (Apartheid Legislation 2014:7).

### ***The Native Resettlement Act no. 19 of 1954***

The purpose of the Native Resettlement Act of 1954 was to establish a Resettlement Board to facilitate the removal of blacks from urban black spots in the "white" towns to the townships, in areas within the magisterial district of Johannesburg (Apartheid Legislation 2014:8).

### ***The Promotion of Bantu Self-Governing Act, 1959 (Act 46 of 1959)***

This Act classified black people into eight ethnic groups, with each ethnic group having a Commissioner General for developing a homeland from where to govern themselves. The fragmentation of South Africa into these non-viable states led to unsustainable developments which resulted in the underutilisation of land (Apartheid Legislation Timeline 2014:7).

### ***Group Areas Act of 1966***

The Group Areas Act of 1966 was intended to complement the Group Areas Act of 1950 and consolidated the law related to the establishment of group areas and the occupation of land and premises. The Act also established four racial groups in the South African context, namely: white, Indian, Bantu and coloured groups. As part of racial polarisation, the Act empowered the State President to proclaim through the Government Gazette an

area for the exclusive occupation by or ownership of members of a specified group, and the South African Police Force was empowered to use force in investigating and enforcing this segregated residence. It is estimated that between 1960 and 1983, about 3.5 million people were forcibly removed as a result of the Act (Apartheid Legislation 2014:6).

### ***The Urban Black Council Act No. 79 of 1961***

The apartheid government, through the Urban Black Council Act of 1961, further imposed the self-government system for black affairs at the municipal level in order to manage the townships. This system, however, remained subservient to the Minister and had no tax and political base, hence leading to poor service delivery in the black townships (Apartheid Legislation Timeline 2014:9).

### ***The Black Local Authorities Act of 1982***

Seriti (1987:2-9) argues that the Black Local Authorities Act of 1982 was intended to create town or municipal councils for blacks in townships, but these structures were vehemently abhorred by communities, and even Ward Councillors of the time were not viewed as legitimate political representatives or leaderships. This serves as testimony that, without a democratic foundation, government structures lack credibility, integrity and accountability to govern or to represent communities, and as part of resistance, the civic movement mobilised communities against these structures, resulting in administration offices and other assets being extensively damaged.

### ***The Black Communities Development Act No. 4 of 1984***

The Black Communities Development Act of 1984 initially operated as another Group Areas Act for the black population outside the black homelands, providing for the controlled development of new African townships upon land otherwise governed by the Group Areas Act and designated for non-black population groups.

This Act and subsequent amendments represented change in government policy after the apartheid government came to the painful realization that blacks in urban areas had no intention of moving to the homelands, as they repudiated the system and had no connection to these areas. This Act also provided for the development of townships and



some form of tenure system on the municipal-owned properties in the form of a 99-year lease. However, this would only be granted to selected people and the leasehold rights would be registered with the Registrar of Deeds in terms of the Deeds Registration Act of 1937 (Seriti 1987:28-29).

During this period, racial segregation was also enforced at the municipal level as townships were still managed by Municipal Authorities in line with the national legislation and policies of separate development for townships for Africans, Coloureds and Indians. Local government remained responsible for the development and administration of black townships and there was stricter oversight of the central government through legislative prescriptions, with institutions such as the Housing Commission being established for the provision of funding for urban black housing.

Advisory Boards were established to introduce African representation on administration of township matters but they were not effective as they lacked powers. Resistance campaigns also gained momentum in the form of deputations and petitions which were then violently suppressed by the state, but only to edify and fuel more township protests; for example, the Alexandra Bus Boycott.

After some time, local authorities undertook the development of gender-based hostels to accommodate the migrant labourers, while more townships and villages for Africans were constructed. Townships such as Orlando East, Lamont, Baumaville and Cato Manor were also developed to cater for families, and later local authorities became increasingly unable to fulfil their obligations because rapid African urbanisation led to greater demand for municipal services, but with insufficient contributions from the central government and lack of profits from anticipated beer sales, which were intended to help fund such services.

Africon (1995:4) also mentions that during the Second World War from 1939 to 1945, the movement of blacks to urban areas became an unstoppable flood. There were insufficient houses for all races, leading to the establishment of the National Housing Commission in 1944, which was partly responsible for financing black housing development from 1947.

The situation was particularly acute in Johannesburg, where large-scale squatter-camps arose from 1944 onwards south-west of the city.

The United Party Government at the time had strongly promoted restrictive measures up to 1945, but was beginning to recognize their impracticality and unfairness. The Fagan Commission, which was appointed in 1946, reported that the previous policies that related to urban blacks had been based on the untenable proposition that they were all temporary migrants, while in actual fact there was also a permanently settled native population. Unfortunately though, by the time the report was published, the then President Smuts had been defeated, and the New Nationalist Party under Malan was committed to the unrealistic and intensified policy of apartheid which was applied to all non-whites.

It is worth noting that despite the continuous political suppression of the black people by the apartheid government, the anti-apartheid resistance continued unabated in various forms, which is reflected below through some significant political and resistance milestones.

### ***Political and Community Resistance on Land and Tenure Issues***

In this section, the political and community resistance in relation to land, housing and tenure issues will be dealt with in terms of the invasion of Orlando, development of the Freedom Charter, the housing crisis and civic disobedience.

#### ***Invasive squatters build shacks in Orlando***

According to the New Nation (1989:65-66), by the late 1930s the black urban population of Johannesburg had increased to 230 000, as during World War 2 new factories were built to provide either for the war or to supply manufactured goods that could no longer be imported to South Africa.

Between 1939 and 1945, the government had to relax pass laws and the influx control. Homeless families jammed themselves into whatever spaces they could find, while others built shacks on the small, white-owned farms which surrounded all the main towns.

In 1944, James “Sofasonke” Mpanza led tenants and backyard dwellers to invade land owned by the Johannesburg City Council in Orlando, and told the council they had moved to the area because they were over-crowded and crammed together like grapes due to inadequate housing (New Nation, 1989:65-66).

The Johannesburg City Council could not evict the invaders who had built shacks as the law prevented the council from evicting people who were employed in Johannesburg. By the end of that week about 6 000 squatters took residence there with other squatter movements starting in the nearby areas (New Nation, 1989:65-66).

People erected shacks in Benoni at the beginning of 1945, in Alexandra soon after, and again at Apex near Benoni, where 18 000 people squatted. The National Party once in power encouraged the white town councils to build huge new black townships, their idea being to divide their labour supplies, with townships supplying urban factories. It is ironic that it was the apartheid government that encouraged township development as a permanent African settlement, but still determined to do this as cheaply as possible.

Their belief was that black housing would be very cheap as it would pay for itself through rent, and that blacks would be kept far away from towns as second-class citizens, comfortable in their matchbox houses.

### ***Adoption of a Freedom Charter***

According to South African History Online (204:2-3), as the black people’s determination to be free continued and gained momentum, the ANC deemed it fit to come up with a document that would reflect a futuristic South Africa based on equality, justice, tolerance and co-existence. Consequently, on 26 June 1955, the Congress of the People converged in Kliptown led by the anti-apartheid alliance under the auspices of the ANC. As a result, the Freedom Charter was adopted and, as a united, non-racial and democratic vision of South Africa, it contained the following critical points in relation to housing and land:-

**There shall be Houses, Security and Comfort:** meaning every person would have a right to stay where they live, with decent housing to bring up children along with environmental and economic sustainability, sufficient infrastructure and municipal services.

**The Land shall be shared among those who work it:** there shall be termination of racial restrictions on land acquisition and ownership, and peasants shall be assisted and supported by the state to develop as farmers.

### ***Housing Crisis***

The Regulatory Framework that was aimed at restricting and controlling the influx of black people into urban areas was ignored by the black population as they flooded urban areas seeking economic and social opportunities, and this led to a housing crisis in the urban black townships as informal settlements mushroomed and the municipal-owned rental stock became overcrowded.

This housing crisis is well captured by the Gauteng Department of Housing (2003:2-3) in its publication, when it says: “South Africa’s housing crisis originated with the inordinate concern of the apartheid government to contain African Settlement in the urban areas through the imposition, for example, of influx control and the Group Areas legislation. In addition, government provided very little housing for the expanding urban population, especially after the 1960s. By mid-1980, these policies had resulted in a large housing backlog; massively overcrowded housing in the black township houses and in settlements both on the urban periphery of the cities and within the (former) homeland boundaries at points closest to the cities.”

Marx and Rubin (2008:4-6) further argue that the enactment of the Native Laws Amendment Act of 1953 tightened the control over black people’s rights to be in urban areas, as Section 10 of the Act provided the following categories of people with a right to be in urban areas:

- ☐ Born in the town and continuously lived there for 15 years,
- ☐ Have been employed in the town for 15 years,
- ☐ Have continuously worked for the same employer for at least 10 years.

Marx and Rubin (2008:4) further mentioned that in the 1960s the government embarked on the public housing programme in townships, and Africans were given conditions and permission to occupy them in reciprocation of rental as townships were viewed as labour centres for white industries and mines. There were five types of tenancy defined by regulations governing urban black townships:-

- ☐ Site permit – households could construct a dwelling unit and rent the dwelling and land.
- ☐ Certificate of Occupation – households could rent a dwelling constructed or acquired by the local authority.
- ☐ Residential permit – households could rent a dwelling originally owned by a white municipality but later transferred to a black administration board.
- ☐ Lodger's Permit – individuals or households without a certificate of occupation, site permit or residential permit could rent a dwelling as sub tenants.
- ☐ Hostel Permit – individuals could rent a bed in a male hostel.

In 1978, in terms of the Black (Urban Areas) Amendment Act 97 of 1978, the first leasehold regulations were promulgated which entertained the issue of tenure rights in the so-called black areas. However, these came with restrictions and qualifications that black people remain permanent residents in the ethnically defined homelands. In 1984, in an attempt to appease civic resistance, further leasehold regulations were introduced, and in 1985 an additional amendment of the 99 year-lease system made it possible for blacks to register full property rights with the Registrar of Deeds. However, these areas had to be upgraded in terms of the Township Establishment and Land Use Regulations, 1986 of the Black Communities Development Act of 1984 (Marx and Rubin, 2008:6).

### ***The Civic Resistance***

In 1983, the Administration Boards that were responsible for the administration of townships were ineffective due to inadequate financial resources, red tape and inability to respond to local needs. This then precipitated mass mobilisation of civic resistance under the auspices of the Mass Democratic Movement, which was comprised of the United Democratic Front, civic associations, faith-based organisations and non-governmental organisations, to mention just a few. Township residents supported a call for rent boycott and non-payment of services, as people demanded secure tenure rights on public housing and a “one city one tax base” (Knight, 2004:3).

Marks (1995:2-3) supports the above statement by arguing that the civic struggles in Soweto and elsewhere escalated with the introduction of the Black Local Authorities Act in 1983, when communities became angrier and more aggressive as councils increased rents, evicted defaulters and demolished “illegal” shacks. Councillors were requested to resign and initially the protests were peaceful, but when the community demands and concerns were not acknowledged and dealt with, protests became more confrontational and eventually became violent. Furthermore, as a result of the non-payment of rental and services, municipalities ended up in great debt and became increasingly ineffective.

The 1980s were known as a decade of violence as the ANC called upon its supporters to make the country ungovernable on all fronts, and the apartheid government’s response was to declare a state of emergency characterised by detention without trial, repression, press blackouts, demonstrations and labour strikes. This effectively turned South Africa into a police state, as soldiers and armed vehicle patrolled the black townships day and night with permission to use whatever force was necessary to subdue the black population. The result was that the liberation movements, being the ANC and the Pan Africanist Congress of Azania, retaliated by exploding bombs in restaurants, shopping centres and government buildings, causing real turmoil in the country. Moreover, the increasing international and national pressure on the government as well as the economic sanctions were starting to hurt the South African economy, and the then State President, Mr P.W. Botha came to the painful realization that change was inevitable, but

nevertheless still precariously clung to power. He subsequently introduced minor reforms that were vehemently opposed as cosmetic as they effectively accomplished nothing, since the majority of the population were still disenfranchised (South African apartheid Laws, 2014:5-6).

One of the reforms was in relation to the tenure system for black housing in urban areas, as in 1984 leasehold regulations were promulgated and further amended in 1985, which made it possible for blacks to register full property rights. To the government's surprise however, the communities rejected these developments as it was during the rent boycott and full property rights could not be registered immediately because the black urban areas first had to be upgraded in terms of the Township Establishment and Land Use Regulations, 1986, as to whether the land was or should be on a freehold or leasehold basis. As a result, the Black Communities Development Act of 1984 was amended in 1986 to provide for full ownership rights for blacks in urban areas, and on the 1<sup>st</sup> January 1989, the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 was promulgated. In terms of this Act, the R1036 regulations which governed the permit and 99-year lease system were abolished and the provisional administrations were given powers to convert occupational rights into perpetual leasehold and ownership (Africon 1995:4).

Knight (2004:3) further argues that due to mass mobilisation and resistance, in 1986 the influx control and legal restrictions that denied black people from owning property in urban black areas were repealed, and eventually in 1989 the government agreed to the Greater Soweto Accord whereby rent and services arrears were written-off and the government committed to the free transfer of houses to the people.

### ***The end of Apartheid and Post-Apartheid Period: 1990–to date***

Mosley (2007:4) opined that the demise of apartheid is relevant to land tenure and ownership rights, as it is known that the apartheid government had discriminatory land policies that were characterised by land relocation and forced removals of the black majority, and which ensured that blacks could not live in “white areas” but had to reside

instead in townships or in impoverished areas known as “Bantustans”. The end of apartheid brought hope to the then disenfranchised majority that the democratic government would redress the socio-economic inequalities such as skewed land distribution, evictions, reallocations and denial of land and tenure rights through land reform programmes that would promote land restitution, tenure reform in both urban and rural areas and land redistribution to the black majority (Hodson, 2014:10-11).

Even Piitso (2014:19) made the following statement with regard to the end of apartheid: “The demise heralded the greatest historical period of the end and the beginning of a transition from apartheid colonial rule to the new dispensation of a democratic social order”.

From 1990 to 1994, South Africa was in transition, despite certain sections of the community not approving of the country’s political process as they feared losing their socio-economic and political status and power. Others however had unrealistic expectations that the democratic government would just give them the assets that they had desired for years in order to lead a comfortable life. The former State President, Mr F.W. de Klerk eventually announced the dismantling of the racial segregation system of apartheid and unbanned political organisations and released political prisoners.

This signalled the beginning of the labyrinthine multi-party negotiation process with all significant political role players for the transfer of power from the minority to the majority. These negotiations commence on the 20<sup>th</sup> December 1990 under the banner of the Convention for a Democratic South Africa (CODESA). The National, Provincial and Local negotiation forums were established to formulate a new national policy for local government, housing, water and sanitation, to name just a few (Wikipedia 2014:11).

One of the critical milestones during the transition phase was the abolishment of the 1913 and 1923 Land Acts in 1991 through the promulgation of the Abolition of Racially Based Measurements Amendment Act No. 133, and the enactment of the Less Formal Townships Establishment Act 113 of 1991, which was intended to accelerate



development of urban land, relax some conditions of township establishment and grant 99-year leaseholds to black residents that could be registered with the Registrar of Deeds (Augustinas, 2002:3).

According to Wikipedia (2014:1-3), by the end of apartheid, South Africa was experiencing serious structural problems, such as stagnant economic growth, increasing unemployment and a government debt that had doubled, thus when the ANC came into power in 1994, it adopted and implemented the Reconstruction and Development Programme (RDP) that was intended to address socio-economic challenges, including poverty, unemployment and the shortfall of social services across the country.

The RDP was comprised of the following six major principles:

- ☐ To adopt an integrated and well-coordinated approach to address the nation's socio-economic problems
- ☐ To be people driven, as in based on the needs and energies of the people
- ☐ To provide peace and security by ending the endemic of violence
- ☐ To build the country by promoting nation building and reconciliation to all different groups and races.
- ☐ To link reconstruction with development by encouraging investment
- ☐ To build and strengthen democracy.

In an attempt to remedy tenure inequalities, during the transition and democratic phases the following legislative frameworks were promulgated.

### ***The Abolition of Racially Based Land Measures Act of 1991***

This Act was promulgated to repeal all racially-based and discriminatory laws that related to land ownership and use, including the Land Act of 1913, the Native Trust and Land Act, and the Group Areas Act of 1950 and 1966. This meant that, irrespective of race, any person with necessary means could occupy and own land in any part of the country without fear of being prosecuted.

□ **The Conversion of Certain Rights into Leasehold or Ownership Act No. 81 of 1988**

According to Africon (1994:11), the Conversion of Certain Rights Act (81 of 1988) came into operation on 1 January 1989 by virtue of proclamation 226 of 1988. This Act empowered the Director General of the Provincial Administration to grant a right of leasehold to holders of the following insecure tenure systems:-

- I. Site Permit: for people allocated a site on which they have erected a dwelling.
- II. Certificate of Occupation: for dwellings that have been sold to individuals by a local authority.
- III. Residential Permit: for people renting a dwelling from a local authority wishing to reside with their immediate family.
- IV. Trading Site Permit: issued to people occupying a trading site, who either erected a building at own cost or bought the building from a local authority.

Africon (1994:12) further mentions that the Director General of a Provincial Administration or a suitably delegated person would have to first conduct an enquiry to determine that the affected site was not disputed and that the person to be granted a leasehold was indeed the correct one. Following the certification of this process, the leasehold could then be registered with the Registrar of Deeds on condition that the land in the townships had approved general plans, was formally registered on the leasehold tenure system by the Registrar of Deeds and was surveyed by the Surveyor-General.

In cases of ownership disputes over these properties, the Act clearly mentions that a quasi-judicial forum should be established and that independent, well qualified people with sound knowledge and skills such as legal practitioners should preside over these cases; and, furthermore, that proceedings shall be transparent, fair and apply an *audi alterem* rule, that parties shall be entitled to legal representation and that, if a person is aggrieved as determined by the presiding officer, they shall be granted a hearing in the form of an internal appeal or outside judicial review.

### **The Upgrading of Tenure Rights Act 1991 (Act No. 112 of 1991)**

In terms of this Act, the various tenure systems were to be upgraded to full ownership rights, and in some instances the upgrade process would be automatic as long as the general plan was approved and the township register was opened with the Registrar of Deeds. Certain forms of tenure were however not covered by this Act, including the permits issued in terms of the 1036 Regulations of the Black Areas Consolidation Act of 1945, which were converted into real rights in terms of the Conversion of Certain Rights Into Leasehold or Ownership Act of 1988, subsequent to the determination of entitlement by the Director General of the Provincial Administration (FinMark Trust 2006:5).

### **The Constitution of the Republic of South Africa, 1996**

According to the Socio-Economic Research Institute (2011:12), a country's constitution is the supreme law of the nation. With specific reference to South Africa, the Constitution recognizes the socio-economic and political injustices of the past and thus intends to heal these divisions and establish a society based on democratic values and fundamental human rights, with the Bill of Rights being the critical component thereof.

In terms of Section 25 of the Constitution, the state is required to adopt remedial measures to enable people to gain access to land on an equitable basis, and to also adopt legislation to ensure security of tenure for all or to redress any situation of people whose land tenure rights are insecure due to past discriminatory laws and practices.

Section 25(5) of the Constitution stipulates that economic, social and cultural rights are socio-economic rights, and the state should be cognisant of them in implementing measures in the execution of the land redistribution programme, while Section 25(7) grants the right to restitution for people and communities who were dispossessed of their properties as a result of discriminatory legislation after 1913 (Socio-Economic Research Institute 2011:12).

Section 26 states that everyone has a right to have access to adequate housing, and the state may not interfere with this right unless justifiable. This section also obligates the

state and other entities or people to desist from preventing or impairing the right of access to adequate housing and places a duty on the state to adopt appropriate measures to ensure that this right to access adequate housing is effectively realized on a progressive basis. However, it must be noted that only the state is responsible for the provision of housing, but that individuals and other agents must provide an enabling environment, be it legislative and otherwise for the state to fulfil its duties (Socio-Economic Research Institute 2011:13).

### **The Land Tenure Act of 1996**

The Land Tenure Act of 1996 seeks to protect the rights of labour tenants who live and grow crops or graze livestock on farms, stipulating that they cannot be evicted without a court order or if they are over 65 years of age (Chenwi, 2008:21).

### **The Extension of Security of Tenure Act No. 62 of 1997**

The Extension of Security of Tenure Act 62 of 1997 seek to protect the tenure of farm workers and people living in rural areas, including their rights to live on the land and other rights such as receiving visitors and access to water, health and education. The Act also regulates the conditions and circumstances under which people who have a right to residence have been terminated or possibly evicted from land, and offers special protection to occupiers who are over 60 and have lived on the land for ten years or more, or are employees or former employees and because of ill health, injury or disability are unable to supply labour. The Act also spells out the rights of owners, protecting them against arbitrary evictions (Chenwi, 2008:27-29).

### **The Prevention of Illegal Occupation of Land Act of 1988 (SouthAfrica)**

The Prevention of Illegal Occupation of Land Act of 1988 put in place procedures for the eviction and prohibition of illegal occupants. It applies to all occupiers of land without the owner's consent and emphasises that evictions can only be undertaken through a court order and after complying with a number of requirements. The eviction notice must be served within 14 days after the court order has been issued and must state the reasons for eviction. The Act requires that prior to issuing an eviction notice, the court must consider the situation of the vulnerable groups or illegal occupiers, including the elderly,

children, the disabled and any women-headed households. In the case of eviction applications being made by an organ of the state, the court must consider the circumstances under which the illegal occupier/s occupied the land and erected the building/s in question, as well as the availability of alternative accommodation for the illegal occupants prior to granting an order for eviction (Chenwi, 2008:35-39).

### ***The Land Administration Act No. 2 of 1995***

Augustinus (2000:3) mentions a critical aspect in relation to the unification of land systems and deeds registration, as during apartheid this was fragmented according to race and the homeland system. With the promulgation of the Land Administration Act No. 2 of 1995, the government sought to achieve the following objectives:-

- ☐ Reassessment of the role of the Surveyor-General and the Registrar of Deeds,
- ☐ Decentralisation of the land administration activities, and
- ☐ Evaluation of the general boundary system, and consideration of the one used in the United Kingdom.

One cannot omit the important intentions of the White Paper on housing as a post-apartheid progressive document which sought to deal with the housing crisis in general. The paper provided for large-scale housing development and provision of secure tenure rights to the historically disadvantaged, and further stated that the government must assist the beneficiaries thereof with various subsidies, such as the new wave consolidation subsidy programme, project linked subsidy programme, individual subsidy programme and the discount benefit scheme (Royston 1996:21).

### **Urban Land Policy**

According to Urban Landmark (2007:21-22), there was arguably no clear land policy in place in South Africa for dealing with apartheid's spatial planning, nor the necessary policy framework to reverse the trends of apartheid, and the impact of the apartheid system on cities and the lives of individuals. Consequently, the Urban Development Strategy was developed which sets out government's urban vision and strategic goals.

The Urban Development Strategy proposed that urban settlements be categorised into four different sizes, namely:

- Large metropolitan areas over 2 million people;
- Large cities between 500 000 and 2 million people;
- Intermediate or medium-sized cities between 100 000 and 500 000 people; and
- Small cities and towns with populations of less than 10 000.

The Urban Development Strategy (Urban Landmark 2007:22) further points out the differences within urban areas irrespective of size, such as:

- I. Well-maintained, well-serviced, low-density suburban neighbourhoods in the former white areas,
- II. Low-income neighbourhoods comprising of townships and informal settlements where there is lack of formal retail facilities and amenities,
- III. Metropolitan city centres which straddle the above urban worlds and are often in decline, and
- IV. Smaller urban centres which are more polarised spatially than other settlements, between former white areas and townships.

### **The Housing Act No. 107 of 1997**

The Housing Act of 1997 gives effect to the right to have access to housing but also spells out different roles and responsibilities of the three spheres of government (National, Provincial and Local) in the housing delivery value chain. This Act emphasises that housing development should entail the establishment and maintenance of habitable, stable and sustainable public and private environments to ensure that communities and households are viable, and that these are located in areas with socio-economic opportunities and amenities, permanent structures with secure tenure, access to water, sanitary facilities and domestic energy supply. This Act also paves a way for local government to be involved in housing development.

Section 10A of the Housing Act No. 107 of 1997 is the most controversial section of the Act, as it prohibits a beneficiary from disposing of a subsidised house whether for income or no return at all, as there is a property clause that prohibits the sale of the property within eight years after the allocation of a subsidised property by the state. Instead, it says the beneficiary must first “return” the house to the Provincial Department if the beneficiary intends to dispose the property. This section of the Act is said to be in contrast with the constitutional provision of ownership, as it takes away a right to alienation and provides no compensation whatsoever. The section does not take into account that one might want to dispose of the property due to economic progression or migration purposes for better socio-economic opportunities (Socio-Economic Research Institute 2011:13-14).

## **Housing Policy**

According to the Socio-Economic Research Institute (2011:21), the 1994 White Paper on Housing and the 2004 Breaking New Ground plan are principal policy documents developed post the apartheid era which seek to address housing challenges and to accelerate service delivery. These policy documents emphasise that security of tenure remains a fundamental principle, as beneficiaries of housing programmes must acquire secure tenure whether in the form of ownership, leasehold, deed of grant or formal rental arrangements. The two policy documents are discussed below.

### ***1. The White Paper on Housing (1994)***

The White Paper on Housing was adopted in 1995 and sets our government’s policy on housing development. The paper recognizes housing as a basic human right, and states that government has a responsibility to ensure that this right is realized.

According to the Socio-Economic Research Institute (2011:21-23), the paper also outlines different roles and responsibilities of the three spheres of government, with community participation being the critical aspect in the housing development project life cycle, and covers the following seven key strategies:

- Stabilising the housing environment: maximise the benefit of state housing expenditure, mobilise private sector investments and lower the risk associated with the lower-income housing market.
- Mobilise housing credit: unlock private sector housing credit and encourage low-income households to save to enable access to banks' credit facilities.
- Provide subsidy assistance: assist the low-income households that cannot independently satisfy their own basic housing needs.
- Support the Enhanced Peoples' Housing Process: facilitate the establishment or directly establish a range of institutional, technical and logistical housing support mechanisms to enable communities to improve their housing conditions on a continuous basis.
- Rationalise institutional capacities: promote proper coordination and integration of resources by the three spheres of government in the housing development value chain, with an emphasis on capacity building to be able to fulfil their different roles.
- Facilitate the speedy release and servicing of land: encourage the speedy release of well-located land for human settlement in pursuance of government's goal of social, economic and spatial integration.
- Co-ordinate government investment in development: the co-ordination of government investment in development seeks to maximise the impact of state investment and careful planning, so that investment in one aspect of development supplements another.

## ***II. Breaking New Ground (2004)***

According to the Socio-Economic Research Institute (2011:66), Breaking New Ground is a revised framework for the development of sustainable human settlements based on the principles contained in the White Paper on Housing. This policy framework was adopted by Cabinet in 2005 and seemed to shift from focusing on quantity of houses delivered to sustainable human settlements with balanced economic growth and social development. The policy framework also stipulated the need for quality houses with a variety of tenure options, such as individual title, sectional title and rental, which is achievable through the state sponsor's subsidy programmes.



According to Fin Mark Trust (2006:10), Breaking New Ground defines four primary ends, namely:

- Sustainable Human Settlement: dependant on sustainable development, wealth creation, poverty alleviation and equity.
- Integration: spatial restructuring for sustainable human settlements requires inter-governmental and intra-governmental approaches as well as the integrated planning and coordination of all spheres of government.
- Housing assets: ensure that housing can be used for socio-economic and financial benefits.
- Upgraded informal settlements: eradication of informal settlements and their integration into the broader urban fabric to overcome spatial, social and economic exclusion.

The Socio-Economic Research Institute (2011:74-76) further defines “subsidy” as money from the government which seeks to assist a beneficiary to acquire low-cost housing without any financial contribution. This money goes directly to the developer or local authority.

### **Housing Subsidy Programmes**

In an effort to actualise the remedial policy and legislative provisions of tenure reform, property development, transfer of properties and tenure upgrade, the democratic government conceptualised and started implementing land reform and housing subsidy programmes.

#### ***Enhanced Extended Subsidy***

The development of the Enhanced Extended Discount Benefit Scheme was intended to remedy the diabolical history of tenure inequality which mainly affected black communities in the townships. These black households have been occupants or tenants of records of the government-owned pre-1994 properties in areas such as Soweto, Katlehong and

Eldorado Park, who tenure rights were inferior and insecure. This programme is undertaken on the basis of co-operative government between Local, Provincial and National governments, and beneficiaries thereof must have been in occupation of state-owned properties, or de facto tenants and be legally competent to enter into a contract. In accessing the programme, the tenant must complete the acknowledgement of debt in cases where there is historic cost or, where balance of purchase price exceeds the subsidy or, where the transfer is not entitled to a subsidy (National Housing Policy and Subsidy Programmes, 2010:20-21).

### **2.5.2 Land tenure dimension on tenure rights of the black urban settlements**

In South Africa, the questions of tenure security and urban access have historically been intricately linked. For this reason, the purpose of urban land tenure reform is to address tenure insecurity of households, homelessness and landlessness as a result of apartheid planning, which characterised urban spatial policy in terms of the structure, layout, governance and functioning that reflected segregated land use and denial of socio-economic opportunities of the urban black population (Cousins, 2014:5).

It must be noted that policy on black urban locations and limitations and access to residential rights was firmly established as early as 1910, and by the late 1950s and 1960s urban resettlement was a cornerstone of the apartheid strategy to reduce the size of the African population in urban areas. The implication of the apartheid vision saw urban inhabitants superfluous to white needs in ethnically-defined homelands, the development of industries on the borders of Bantustans and the denial of urban residential rights.

The Natives Laws Amendment Act of 1937 and the Natives (Urban Areas) Consolidation Act of 1945 further divided South Africa into prescribed stricter control measures to control black people's movement between the "white" towns and "black" rural areas. All these laws reflected the predominant view of the white community that the urban areas were to be regarded as enclaves where European interests were paramount and within which natives may only be permitted if they were formally employed by the white industries and mines.

Then in 1950 and 1966 respectively, the Group Areas Acts were introduced, and consequently millions of non-whites were evicted from their urban freehold areas where their households were often destroyed to force them to move to formal townships on the periphery of the white cities and towns. Other black people were removed to the Bantustans, as in the small areas of rural land set aside for black occupation, such as Transkei and Ciskei.

Mass housing construction then took place in black townships on an unprecedented scale and these dwellings were financed by government and built by the larger municipalities, such as the Johannesburg City Council. The tenure rights of occupants were however restricted to ensure temporary residence, as a black person qualifying to be in an urban area could thereby obtain a permit, issued by the municipal authority, to occupy a municipal-owned house in the black urban area, and only certain people were eligible for these rights.

By 1978, various permits were issued to qualifying blacks in terms of Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters of 1968, namely: Regulation 6 or Site Permit, where a person was allocated a site and on which he had erected a dwelling; Regulation 8 or Certificate of Occupation, where a person would “buy” a dwelling from a local authority; and Regulation 7 or Residential Permit, where a permit would be issued to a person renting a dwelling from a local authority to reside with his immediate family.

In 1978, it became possible for blacks to register rights of 99-year leaseholds over a property in black urban areas. The introduction of the 99-year leasehold signified an important shift in government policy with regard to land ownership for blacks in urban areas, as prior to 1978, blacks could only obtain occupation rights to houses with no rights to the land on which the houses had been erected.

After the introduction of the leasehold scheme, blacks could obtain a registered real right to the property as well, but the black community did not buy in and as a result the leasehold scheme was unsuccessful. In 1986, the Black Communities Development Act, 1984 was amended to provide full ownership rights for blacks in urban areas.

On 1 January 1991, the Conversion of Certain Rights into Leasehold or Ownership Act of 1988 was promulgated, the implication being that in terms of this Act the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters were repealed. Consequently, all the provincial administrations in South Africa were assigned with the responsibility of converting the occupational rights of tenants of records of pre-1994 state-owned properties in all black urban settlements into full ownership rights, and this is where the Transfer of Housing Project or Urban Land Tenure Reform commenced.

## **2.6 CONCLUSION**

Land tenure reform programmes have been advocated as instruments of development and as panaceas to the socio-economic plights of the poor and the discriminated against, both internationally and in Africa. This they accomplish by promising greater agricultural and economic productivity as a result of titling, which is anticipated to promote land investment, credit supply and efficient land markets.

Contrary to these promises however, these programme have revealed negative effects of titling including conflicts, corruption and worsening tenure insecurity of the poor and small farmers.

In the South African context, land ownership to blacks as a general rule was not available for a long period, hence their abhorrence of colonialism and apartheid which precipitated their socio-economic plight. Through the eras of segregation and apartheid, the African communities were denied land and ownership rights and treated as a mere labour resource for farms, mines and industries. The Nationalist Party government utilised

legislative power to maintain control of the land and migration of the labour resource through separate development policies.

The Land Acts of 1913 and 1936 were cornerstones of land dispossession and denial of land ownership rights to the indigenous people, as the provisions of these Acts restricted the leasing, occupation and purchasing of land by Africans to only the designated reserves. So it is that for years the African people embarked on an unremitting struggle to reclaim their land, restore their dignity and for equal treatment not based on race, gender, sexual preference or creed, resulting in mass protests in the form of political and civic resistance.

After the victory of the ANC in the first democratic elections in 1994, hope developed among the black people that their socio-economic situation would be remedied, and that the democratic government would build a non-racial, non-sexist, democratic and prosperous society founded upon the principles of equality, freedom and prosperity.

Consequently, a number of legislations and policies were promulgated and developed such as the RDP, which was an integrated, coherent socio-economic policy meant to mobilise South Africans and the country's resources for the final eradication of apartheid. Other policies were developed that related to land and housing with the intention to redistribute land, restore land ownership rights of those who were dispossessed through discriminatory laws, to provide secure tenure rights in both rural and urban areas, and to transfer state-owned properties to long-term tenants of record who have been in occupation of such properties for years.

## **CHAPTER THREE: RESEARCH METHODOLOGY AND DESIGN**

### **3.1 INTRODUCTION**

Research methodologies can be viewed as the manner in which a researcher approaches a research problem. In support of this statement, Kothari (2004:8) argues that research methodology, “may be understood as the science of studying how research is done scientifically”. These tools help the researcher to collect data for the research study and to examine information collected in order to draw a conclusion.

Land ownership as a tenure system defines the ability of individuals to have full access to land as well as security to use and occupy it. The land issue has been contentious in South Africa for many years, as demonstrated in Chapter two by analysing the African and international approaches of land reform programmes, including the South African urban context.

This chapter outlines the research methodology and research methods used to carry out this study, and further provides justification for their selection based on their value for achieving the research objectives, with document analysis being the tool selected to collect data. Also covered are the ethical considerations that were taken into account during the data collection process.

### **3.2 RESEARCH METHODOLOGY**

There are two types of research methodologies used to conduct empirical studies, namely qualitative and quantitative, each of which has a unique approach.

According to Paton (2002), quantitative methodology focuses on numerical and scientific experiments, while qualitative methodology has philosophical roots in the naturalistic school of thought. Paton further states that a qualitative approach enables issues to be studied in depth by supplying detailed information about a smaller number of people or

cases, hence increasing the depth of understanding for situations that would otherwise be beyond the researcher's grasp in terms of time and resources.

The qualitative research approach is a good research method for evaluating programmes by capturing and communicating the participants' stories, thereby enabling a better understanding of the process and the programme's outcomes for those who must make decisions about it (Paton, 2002).

The qualitative research approach in this study will enable the researcher to logically document the evolution of tenure rights in South Africa, and its impact on the households in the former black urban settlements, as it is aimed at providing inputs into the current Land Reform Policy and programme.

The manner in which a problem is presented guides the type of research approach to be used, and the methodology serves as the parameter that can be utilised to arrive at possible solutions. The study necessitates an evaluation of the process towards establishing, implementing and assessing the efficacy of the Land Reform Programme in terms of upgrading of tenure rights, empowerment and development in the former black townships.

Furthermore, because the researcher was involved in the implementation of the state's remedial programme on ownership rights, this approach is seen as appropriate. The researcher becomes part of the natural setting where the research is to be conducted, and a relationship based on trust is created between the researcher and institutions involved.

### **3.3 THE AREA OF STUDY: SOWETO (SOUTH WESTERN TOWNSHIPS)**

Soweto, as a black urban settlement, is characterised by old matchbox-style state-built houses, and was designed to neither serve as a site of economic activity nor to be habitable. Instead, it was intended as a labour reserve for supplying cheap labour for white industries and mines, and little beside.

As the area of study for this research, the focus is on the evolution of land or tenure rights in Soweto, from residential permits and leases to full ownership rights in the form of title deeds.

Soweto is one of the biggest urban human settlements in South Africa, predominantly inhabited by blacks and has been at the forefront in the struggle for restoration of human dignity in the country.

The research approach **will entail** fragmenting the research study into two areas in Soweto, namely Zola and Orlando locations.





Source: <http://www.sahistory.org.za/topic/history-soweto>

### **3.4 BACKGROUND: AREA OF STUDY**

According to History Online (2015:2), Soweto is an acronym of South Western Townships and falls under the municipal jurisdiction of Region D of the City of Johannesburg Metropolitan Council, and is located 20 kilometres from the city centre of Johannesburg within the Gauteng Province.

As mentioned, Soweto was designed to house cheap black labour and was thus regarded as a labour reserve centre for “white economic development”.

Soweto, as a typical black township is characterised by small matchbox houses of low standard and poor quality, with poor services, infrastructure, amenities and transportation. As a township, it was meant to enable black people to remain only healthy enough to provide manual labour to the white community and white-owned economy and to be easily accessible to police patrols.

Despite the fact that it is not the purpose of this research study to focus on the history of Soweto, it is nevertheless logical to give a brief snapshot on the background of this township in order to better comprehend the area of study, and this brief background will be dealt with in terms of phases.

#### **1904-1930s**

The first development took place in 1904, when Klipspruit was provided by Johannesburg City Council as a temporary settlement built with corrugated iron sheets, but the occupation lasted for 30 years. The second development was Orland East in the 1930s, which was built as a formal settlement and accommodated 80 000 people, with an additional 5 800 houses built in 1939 subsequent to land invasion as the demand for more houses increased (History Online 2015:2).

## **Early 1940s**

Due to the increasing need for cheap black labour to work in large-scale industrial developments, there was a demand for more housing and the Johannesburg City Council hence had to accede to sub-tenancy, which resulted in Jabavu township being established in 1944 and Dube township in 1945 due to political pressure (History of Soweto 2015:1).

## **1948-1971**

During this period a number of townships were established with formal housing as the then apartheid government had finally accepted that blacks were now permanent residents of urban areas with no intention to go to the homelands. The government therefore promulgated the Group Areas Act and Native Urban Areas Act to ensure proper control of their movement in urban areas. The new townships established during this phase were Meadowlands, Diepkloof and Rockville to accommodate families who were forcefully removed from freehold areas such as Sophiatown, Martindale and Alexandra.

In 1954, other townships developed were Tladi, Zondi, Dhlamini, Chiawelo and Senaoane, and between 1956 and 1958 Zola, Jabulani, Moletsane and Naledi townships were established with formal houses as well. These latter township houses were built through the donation of R6 million by Sir Oppenheimer after he became disgusted by the state of housing for the areas' black households (History of Soweto 2015:1).

In 1963, the name Soweto was eventually adopted for the sprawling township that used to be Doornkop, Klipvierssoog, Diepkloof, Klipspruit and Vogenlsstruifontein farms.

Since the apartheid government was guided by the policy of separate development, in enforcing this policy, township housing was allocated along an ethnic grouping basis. For example, Zola and Jabulani for Ngunis and Xhosas; Naledi and Moletsane for Tswanas and Sothos; and Chiawelo for Tsonga and Venda-speaking blacks (History of Soweto, 2015:2).

### **1972-1976**

In 1973, the West Rand Administration Board became responsible for the administration of township houses by taking over from the Johannesburg City Council. However, this became ineffective due to inadequate financial resources, red tape and inability to respond to local needs and political resistance, which gained momentum as a form of non-payment of services. This was the period of the Soweto Uprising, whereby schoolchildren strongly opposed Afrikaans as a medium of instruction, leading to a massive clampdown by the state (History of Soweto 2015:3).

### **1977-1989**

It was during this period that Soweto began to be recognized as a permanent township with permanent residents, and not as mere sojourners who came to Johannesburg to sell their cheap labour. Various legislations were therefore promulgated such as the Community Council Act of 1977, the Black Local Authorities Act of 1982, Black Communities Act of 1984, the Regional Services Council Act of 1985 and the Conversion of Certain Rights into Leasehold or Ownership Act of 1988.

Numerous separate areas and racially-based local authorities were established during this time and were expected to raise their own revenues to run their administrations. These structures were however repudiated by communities as illegitimate and met with extensive resistance, including widespread rent boycotts and even the burning down of administration buildings to ensure that they were non-operational (History of Soweto 2015:1).

### **1990s and Beyond**

During the early 1990s, the apartheid government finally realized that the status quo could no longer be sustained, and as a result South Africa found itself in a transition phase. The national negotiating forums were established to formulate new policies on land, housing, water and sanitation, as were the interim arrangements on how local government should function and be structured.

According to Gauteng Department of Housing (2002:2-3), during this phase all the legal restrictions denying blacks the right to own property in urban areas were repealed and eventually in 1989, the government agreed to a Greater Soweto Accord, whereby rent and services arrears were written off and the government committed to the transfer of houses to the people, through the development of the Discount Benefit Scheme Programme.

### **3.5 SAMPLING**

Sampling can be defined as a population of interest that is identified and selected by the researcher to conduct a research study, and which can be selected randomly or non-randomly (Study.com, 2015:2).

The sample frames for this research study are Zola and Orlando locations, for the following reasons:

- They are characterised by old council “matchbox” houses, which have been occupied by households for decades in exchange for rental with no secure tenure rights.
- They are among the oldest and largest purely black urban settlements in South Africa as they were established in the 1930s and 1950s respectively.
- They are the only townships in Soweto selected by the Gauteng Provincial Department of Human Settlements for the Twenty Priority Township Programme aimed at the renewal of the socio-economic infrastructure, and which entails the tenure urban reform project, upgrade of housing project, and economic and infrastructural development project.
- Some community activists who reside in the townships took part in the resistance and efforts of the Soweto Civic Association against the notorious black local authorities and insecure tenure rights for urban blacks, which culminated in the urban reform programme.

- Both locations, Zola and Orlando are part of the Gauteng provincial intergovernmental programme called Twenty Priority Townships, which is aimed at rehabilitating the infrastructure of the old established townships in order to improve the quality of life for targeted communities. Services implemented under this programme include the upgrading of tenure rights, construction of backyard rooms, rehabilitation of clinics and schools, the tarring of streets and construction of business hubs.
- The other two reasons are that some of the prominent political figures who sacrificed their lives and made enormous contributions in changing the South African political landscape are from Orlando, and Zola is where the researcher was born and bred and the area shaped his perspective about life in general.

### **3.5.1 Orlando location**

Orlando Township is a black urban settlement within Johannesburg and is divided into an Eastern and Western part, with the first development of the area being in the early 1930s. Orlando was named after Mr Edwin Orlando Leake, who was a Mayor of Johannesburg. The area is well known for a number of political milestones and political figures, including the land invasion led by James Mpanza, the death of Hector Peterson in 1976 and political icons such as Nelson Mandela, Smangaliso Sobukwe, Walter Sisulu and Desmond Tutu.

### **3.5.2 Zola location**

Zola Township is another black urban settlement within Johannesburg and is divided into a Southern and Northern part. The first development of the area was in early 1956, and occupation of houses commenced in 1958, specifically for Zulu and Xhosa speaking blacks. The area is well known for a number of young musicians such as Mduduzi “Mandoza” Tshabalala and Bonginkosi “Zola” Dlamini, and in the early 1960s was known as the roughest and unsafest place in Soweto, characterised by gangsters. It was thus called *kamushaye aze afe*, which means “when you are attacked, you are not left until you are dead”.

### **3.6 RESEARCH DESIGN**

According to Patton (2002:3), data or content analysis is a method of analysing text from documents or interviews when conducting a research study. For this particular study, data analysis was undertaken to organise data in a logical and understandable way, and this entailed data preparation, descriptive statistics and inferential statistics.

The research design selected to conduct this research study is content analysis, looking at policy and legislative frameworks, books, articles and government reports which provide a comprehensive perspective on past events, as in how they influence the present and how they will relate to the future.

The reason for selecting this design is because the research study looks at the evolution of the urban tenure system in South Africa, which involves the historical overview of the urban tenure system for blacks, past discriminatory laws that cemented their dispossession, landlessness, homelessness and tenure inequalities, and the remedial government's intervention to redress tenure inequalities of the past and the socio-economic impact thereof.

The planned approach to conduct this research study takes cognisance of the following elements:

- a) Sample
- b) Purpose of research
- c) How will data be collected or generated?
- d) How will data be analysed?
- e) How will the results be obtained?
- f) Identification and acknowledgement of any issues or hindrances and how they would be dealt with.

### **3.7 LIMITATIONS TO THE STUDY**

The first limitation in conducting this study was the discovery that little or no studies have been conducted in South Africa in relation to urban land tenure reform on pre-1994 state-owned properties in formal townships. Document analysis was therefore predominantly focused on policy and legislative frameworks, as these were tools used for the regulation of state-owned properties in the former black townships. To a certain extent, reference is also made to the theoretical framework of de Soto in terms of its relevance to the South African context, as he argues that land title programmes create an enabling environment for beneficiaries to use their properties as collateral for economic and investment opportunities.

The second limitation is that many studies undertaken to date on land reform, both for urban and rural scenarios are in fact limited to rural communities, agricultural land, waiting lists, upgrading of slums or informal settlements, and on the lease and permit system, without focusing on full ownership or secure tenure rights of households in formal, pre-1994 black urban settlements.

The third limitation to that since the research study is focussed on Zola and Orlando, locations built and occupied between 1935 and 1958 respectively, there is a likelihood that the first permit holders and tenants of records could either be deceased or too frail and old to give account of the sequence of events prior to titling of their properties. As a result, the researcher was forced to rely on document analysis.

### **3.8 RESEARCH PLANNING**

In conducting a research study, it is critical to plan properly on how one is going to approach the research study in terms of collecting, organising and citing the data. The planned approach of this research study considered the following:

- ☐ What is the purpose of the research?
- ☐ How will the data be collected and categorised?

- How will the data collected be analysed?
- The need to map relationships that may highlight issues or connections within the field of study
- The need to draw on what has been learned in conducting the research study.

### **3.9 DATA COLLECTION METHODS**

The researcher selected literature review, which is a qualitative research approach, as a method of collecting data, as it entails an assessment of a body of research that addresses a research question and also identifies what is already known about an area of study. The information is then gleaned from secondary sources such as books, research papers, official statistics, government reports, web data, and policy and legislative documents.

This process also included accessing the project database from the Gauteng Department of Human Settlements to determine project status and performance, such as number of properties claimed, number of properties registered or title deeds issued, and number of properties in the transfer process either being disputed or at different stages of being processed. In the course of gathering information, it was critical to ensure that the literature gathered should address the research question. In addition, the selected literature had to be reviewed and notes taken to describe, summarise, analyse and identify key concepts.

The review of literature had to relate to the broader concept of land tenure programmes, then narrowed down to the concept of urban land tenure system, which is relevant to the research problem. Furthermore, to give a broader perspective on the land reform programme both the African and international approaches were explored. However, it must also be noted that the greatest challenge in conducting the literature review or collecting data for this research study was the location of relevant literature, since contemporary research studies and remedial government reform programmes



predominantly focus on land reform programmes for the agricultural or rural communities to the exclusion of urban areas.

Some interesting literature or theory explored in this research study is that of Hernando de Soto, who believes that the formalisation of land tenure can bridge a gap between the informal and formal economy by bringing dead capital to life. He argues that if poor people are given title deeds to property they traditionally occupy, they can then use this as collateral for loans from financial institutions to empower themselves economically, such as starting their own business. Contrarily, the South African land experts and academics viewed this theory as too simplistic in that it would not be applicable to the low-cost housing in South Africa, but this will be dealt with in dealing with findings on the benefits or efficacy of land title programmes (Tomlinson, 2007:17-18).

### **3.10 DATA PREPARATION**

Data preparation involves checking information for accuracy and transforming, developing and documenting data to be in a logical state so as to enable a comprehensive data analysis process (Business Dictionary, 2015:1).

For the social research, it is critical that the data collection and preparation processes are of a good quality to eliminate inaccuracies and to ensure overall quality of subsequent analysis.

The intention of logically preparing data collected is to ensure that it is ready and in a suitable format to conduct thorough analysis, thus data has been categorised and organised in patterns, critical themes and meanings that emerge therefrom, as demonstrated below:

- Historical Background: Urban Land Tenure System in Black Townships
- Policy and Legislative Framework: Land Ownership Rights
- The Influence of Civic Resistance on Urban Tenure Reform

- The Transfer of Housing Process
- Identification and Roles of Project Stakeholders in the Transfer of Housing Project
- Project Challenge: Implementation Phase
- Delivery and Current Status of the Programme in Zola and Orlando locations
- Evaluation of the Urban Tenure Reform or Transfer of Housing Programme.

### **3.11 DATA ANALYSIS**

The main purpose of data analysis is to attach meaning to the vast amount of collected data.

Data analysis can then be defined as a process of evaluating data using logical and analytical reasoning to examine each component of the data provided. This entails various processes, such as editing and cleaning, detailed analysis, graphical analysis and the use of frequency tables, cross tabulation, filtering and simple regression analysis (Business Dictionary, 2015:1-4).

In conducting this research study, the qualitative data from the available and relevant documentation and project reports on the urban tenure reform were analysed to determine factual information in terms of number of residential properties occupied in the two locations, namely Zola and Orlando. In edifying the argument or findings, there is use of descriptive statistics in terms of different tenure systems and the number of households that have made applications for title deeds, as well as the graphical depiction of properties in terms of properties claimed, transferred, disputed and outstanding.

### **3.12 ETHICS AND DATA PROTECTION**

According to the Business Dictionary on Ethics and Data Protection (2015:1), ethical guidelines seek to protect the individuals, communities and environments involved in the study against any form of harm, manipulation and malpractice.

One of the reasons for undertaking this study was because of negative comments by certain commentators and political organisations that the democratic government has done nothing to address the inequalities in the urban tenure system. Some of the tenants in these state-owned houses in townships have not received title deeds to date, despite decades of occupation with insecure tenure rights, yet more resources have been allocated and programmes focused on rural and agricultural land.

Through this study, the researcher therefore seek to repudiate these statements by demonstrating the government's intervention through the development and implementation of the urban tenure reform programme.

Regarding compliance to professional and ethical considerations, the writer did not manipulate figures on statistics regarding the project's status in terms of title deeds that have been issued or are outstanding and the challenges thereof. This is because the researcher did not intend to impugn the personal and professional integrity of the aforementioned commentators and institutions, hence only factual information and statistics are presented based on documents and reports that are readily available for public perusal.

### **3.13 CONCLUSION**

This chapter dealt with the research methodology and research methods used to carry out this study. It further provided justification for the selected methodology and methods, taking into account the value of these tools utilised to achieve the research objectives. Document analysis was used to collect data in terms of the urban tenure reform programme for the predominantly black urban settlement of Soweto, with a specific focus on Zola and Orlando townships. Also covered were the ethical considerations that were taken into cognisance.

As for the data collection process, this involved various steps such as framing the research question, searching relevant bodies of literature, managing search results, synthesising the research literature and writing the assessment thereof.

Literature was reviewed to assess the body of research that addresses the research question, mainly from secondary data such as books, publications, articles, project status and progress reports and government legislation and policies.

The first limitation in conducting this study was the discovery that few or no studies have been conducted in South Africa in relation to urban land tenure reform on pre-1994 state-owned properties. Instead, many studies undertaken to date on land reform, both for urban and rural scenarios are limited to rural communities, agricultural land, waiting lists, upgrading of slums or informal settlements. Furthermore, the first permit holders and tenants of records of these properties are likely deceased or too frail and old to give accounts of the sequence of events prior to titling of their properties, and as a result the researcher was forced to rely on document analysis.

## CHAPTER FOUR: PRESENTATION OF FINDINGS AND DISCUSSION

### 4.1 INTRODUCTION

As stated in previous chapters, the need for a land reform programme arose from the racially discriminatory laws and practices of the past, especially those related to land ownership and use, as these resulted in extreme inequalities that persist to this day.

This chapter presents the findings of the research study, taking into consideration that the critical intention of conducting this research was to contribute to the body of knowledge relating to urban development and tenure reform in black urban settlements such as Orlando and Zola in Soweto. This chapter also demonstrates the democratic government's commitment in redressing urban tenure inequalities as precipitated by discriminatory policies of the past, as there is no study that has ever been undertaken on the evolution of the tenure system in the former black urban human settlements.

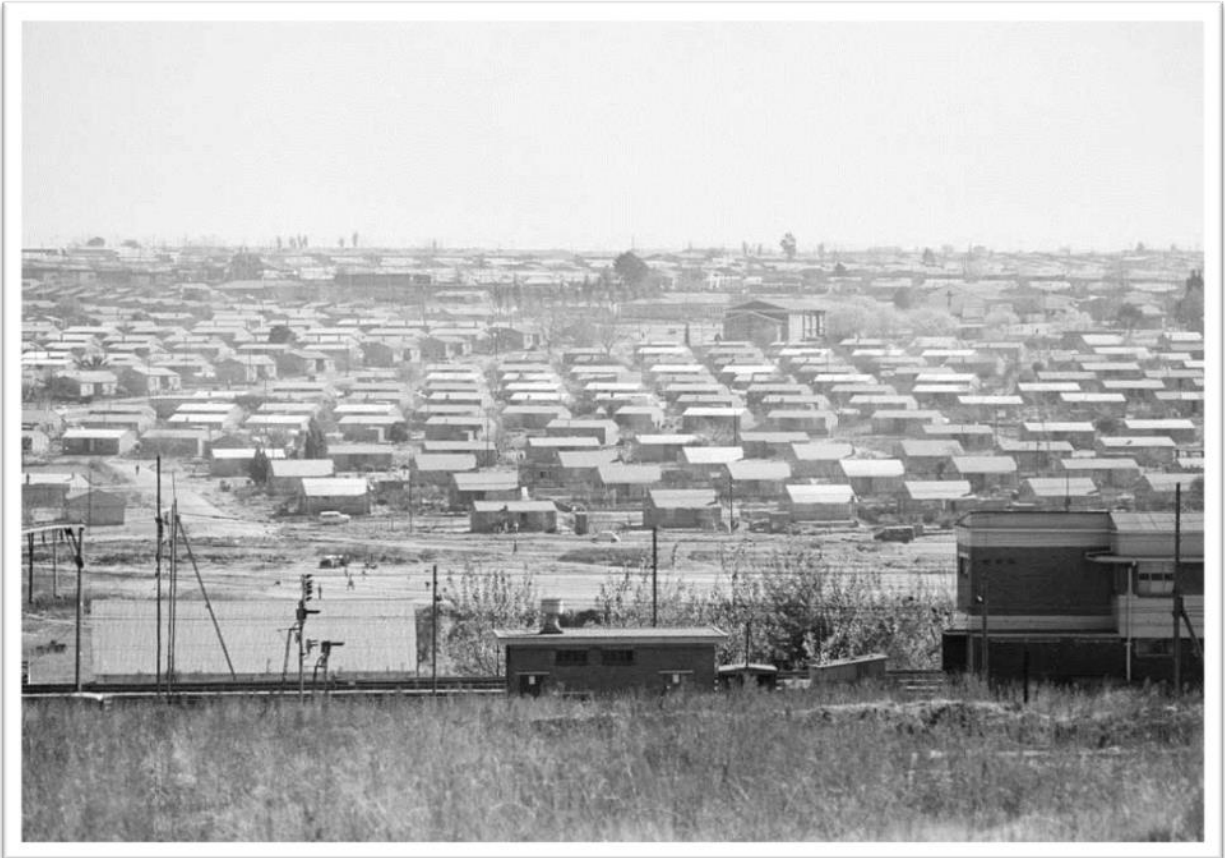
In approaching this chapter, the **researcher will present** findings and discussion based on documentary analysis including the review of books, research papers, official statistics, government reports, web data and policy and legislative documents that relate or are relevant to the research study undertaken. Furthermore, this will be guided by the questions listed below, with reference or inference to the different perspectives of the authors, legislations, articles or reports that have covered the research topic of land tenure reform.

- ☐ What is the historical background of the urban land tenure system in black townships?
- ☐ What were the urban regulatory and governance frameworks in this regard?
- ☐ What was the influence of civic resistance?
- ☐ What is the Transfer of Housing Process?
- ☐ Which stakeholders were involved and what was their role in the project?
- ☐ How were housing disputes resolved?

- What is the delivery and current status of the programme?
- What is the impact of the programme on the benefiting households?

Figure1:

Soweto



Source: <http://www.sahistory.org.za/topic/history-soweto>

#### **4.2 FINDINGS: HISTORICAL OVERVIEW OF URBAN LAND TENURE SYSTEM IN BLACK TOWNSHIPS**

The historical background of the urban land tenure system and rights can be summarised in terms of territorial segregation, forced resettlement and political exclusion, which was precipitated by violent conquest and repressive laws. This can be dealt with in terms of several well-defined eras, namely: pre-colonial era, colonial era, segregationist era, apartheid era and transition era.

#### **4.2.1 Pre-colonial era**

- Before the arrival of white settlers, all the various African tribes enjoyed different forms of secure tenure rights, including individual, family and communal tenure systems.
- The access to land was guaranteed to all members of the community and “visitors” were welcome in a spirit of Ubuntu. African communities used to share their resources but also viewed land as a sacred resource.

#### **4.2.2 Colonial era**

- The increased European encroachment ultimately led to the colonisation and occupation of South Africa by white settlers, first by the Dutch in 1652, and subsequently by the Portuguese and English.
- According to Winsborg (2006:56-58), the earliest land tenure reform dates back to the conquest of Africa by Europeans seeking to extract resources, and who forced political domination onto the locals as they argued that African communities could not claim the land as theirs without producing proof of ownership.
- Colonisation took place through various methods, such as military conquest, unjust treaties and unequal trade and development, and European settlers perceived Africans as ignorant of land concepts. As a result, colonial governments gave communal lands to white settlers on the basis of freehold tenure, introducing a new dimension to land ownership which was mainly in the form of privatisation.
- This was meant to provide colonial settlers with supreme rights of access and their own land and natural resources, and as a result, Africans were resettled to non-viable land, where they were unable to rear their cattle and continue their cropping system, while white counterparts were moved to high potential agricultural areas.

#### **4.2.3 Segregationist era**

- According to Hodson (2014:4), before South Africa became a union there were virtually no statutory restrictions on the acquisition of land by Africans who were only entitled to occupation and land use, while the land was registered in the name

of the Secretary of Native Affairs as trustees, and this was not even divulged to Africans as the “purchasers” of land.

- South Africa became a union in 1910 as the culmination of an all-white convention held in 1908, and by the promulgation of the South Africa Act of 1909 which unified the Colonies and the Republics together as a Union, with the provision that it remains a British territory but is governed by the Afrikaners. As a result, Louis Botha became the first Prime Minister and the four colonies became provinces. Furthermore, political rights were all but limited to the white population, as they were thereby enfranchised in the Transvaal, Orange Free State and Natal, with the exception being in the Cape where only property-owning blacks could vote, but only for white candidates, and the blacks’ franchise was limited to the Provincial Council. It must be noted that during this period, various racist laws were promulgated which took away land and political rights from Africans in Natal, Transvaal and Orange Free State.
- Subsequent to the unionisation of South Africa, various discriminatory laws were promulgated including the Land Act of 1913, the Black (Urban Areas) Act of 1923, the Slums Act of 1933, the Development Land Act and Trust Act of 1936 and the Native Administration Act of 1927, and all these discriminatory laws led to land tenure inequalities as their application precipitated territorial segregation, forced resettlements and land dispossession. To Africans, they hence had a decidedly negative impact such as being stripped of their economic independence and self-pride as a nation, and leading to subsequent migration, urbanisation, landlessness and homelessness.

#### **4.2.4      Apartheid era**

- When the Nationalist Party came into power by winning the national elections in 1948, Dr D.F. Malan became the Prime Minister and the existing segregation policies at the time were further reinforced and institutionalised through the legal system of apartheid. This system was characterised by the belief of white supremacy and denial of human rights, and consequently the South African population became more racially segregated in all aspects of life.



- The laws established under apartheid combined with earlier segregation laws and customs culminated in a new comprehensive code of racial statute, which had as its main aim the establishment of legal separation and white supremacist rule. The result of this was to legally affect all aspects of life for black people, including land ownership, freedom of speech and association, freedom of movement, freedom to vote, and constitutional rights in terms of residential properties.
- The promulgation of the Group Areas Acts of 1950 and 1966 respectively provided that there should be distinct areas in which black and white could live and work.
- The urban, industrial and agricultural areas were reserved for whites, and blacks were allocated areas on the periphery of cities in townships with no socio-economic amenities. The Bantu Authorities Act of 1951 then created the homeland system where blacks could exercise political power, and where they could reside and own property in the reserves.
- In dealing with increasing African urbanisation, the Native Law Amendment Act was enacted in 1952 which restricted the movement of blacks in urban areas and extended the pass system to African women.
- The economic pressures in terms of resource demand by the mining and manufacturing industries resulted in increased African urbanisation despite the influx control system; consequently, this resulted in overcrowding and mushrooming of informal settlements and poor living conditions, as there was inadequate housing and municipal services to cater for the rapidly rising demand.

#### **4.2.5 Transition era**

- After the release of Nelson Mandela and the suspension of the armed struggle by the ANC and other liberation movements, the National Party led by FW de Klerk had to affect measures to end the centuries of apartheid. Consequently, the Abolition of Racially Based Land Measures Act was promulgated in order to bring an end to the Land Acts and came into operation on 30 June 1991. This Act finally repealed the laws and restrictions related to land ownership, occupation and use.
- The first democratically elected government inherited a country ravaged by extreme levels of inequality and had to dismantle the previous government's

settlement policies, such as enormous backlogs in land and housing, as well as address past injustices through the restoration of land rights to those who had previously been forcibly dispossessed.

As a result, a new policy and legislative framework was developed to achieve the following objectives as outlined in the Reconstruction and Development Programme;

- Creation of equal opportunities for all South Africans to develop to their full potential.
- Boosting productivity and household income through job creation, productivity and efficiency, improving conditions of employment and creating opportunities for all to sustain them through productive activity.
- Improving living conditions through better access to basic physical and social services, health care, and education and training for urban and rural communities.
- Establishing a social security system and other nets to protect the poor, the disabled, the elderly and other vulnerable groups.

The Land Reform Programme was developed and implemented to deal with the negative effects of discriminatory land-related laws both for rural and urban areas:

- In rural areas, the government's vision was to return the land to people who were disposed after 1913, to address the skewed land ownership along racial lines, and to secure and strengthen the rights of people whose rights were insecure due to discriminatory laws.
- In urban areas, the government's vision was to address urban landlessness and homelessness by upgrading tenure rights and directing development of affordable housing and services to unused and underused land within the present urban boundaries and close to socio-economic amenities.

### **4.3 FINDINGS: URBAN REGULATORY AND GOVERNANCE FRAMEWORK**

- Findings on the Urban Regulatory and Governance Framework will cover both the discriminatory and remedial frameworks.
- The application of the discriminatory laws, policies and practices resulted in extreme inequalities in relation to land ownership and use.

#### **4.3.1 Discriminatory regulatory framework**

The following laws were promulgated to provide a framework for the policy of racially-based territorial segregation.

##### ***The Land Act of 1913***

- The Land Act of 1913 was the basis for apartheid and territorial segregation, and formally limited African land ownership as it prohibited the indigenous people from occupying or acquiring land.
- The Act did an inordinate amount of damage and injustice to the African people by virtue of dispossession and impoverishment, and this has left a lasting and prejudicial legacy of land deprivation, and consequently economic inequality.
- The Act effectively banned sharecropping contracts between white land owners and black farmers, causing a substantial loss of income for these black farmers, which in turn resulted in further economic hardship.
- The Act was used as a gradual process and artificial means to ensure that Africans became perpetual labourers and were unable to bargain for the remuneration of their labour in agricultural and industrial centres, limited the economic progression and independence of the African people as well as lessening their chances to compete freely and as equals.

##### ***The Native (Black Urban) Areas Act of 1923***

- The Native (Black Urban) Areas Act of 1923 provided that local authorities must set aside land for the establishment of townships and prohibited blacks from residing in “white” urban areas, as they were only reserved for the white population.

- ❑ Blacks' residential status was as a mere labour-resource to service white companies and industries, thus they were required to always carry pass books to verify that they had permission to be in urban areas. Failure to produce these passes when asked would result in immediate arrest and being sent to the rural areas.
- ❑ This Act also empowered municipal authorities to secure and provide land for the development of townships where African labourers and their families would reside, but regulated their movement and presence through the municipal permit and influx control system.
- ❑ Municipalities were also expected to establish separate revenue accounts for income extracted from the native locations that would finance the upkeep and improvement of black locations, which were not intended for economic activity nor even to be habitable, but were merely created as urban reservoirs of cheap labour marked by row houses to enable easy police patrols.

### ***The Native Trust and Land Act 18 of 1936***

- ❑ The Native Trust and Land Act 18 of 1936 provided for the establishment of the South African Native Trust that would be responsible for the administration, settlement and support of black people.
- ❑ This Act banned African land ownership and introduced trust tenure through the South Africa Development Trust, which was responsible for acquiring land for black resettlement, though this was only limited to 13% of the nation's total land.
- ❑ This Act also empowered the Native Trust to expropriate black people's land outside the scheduled areas, with the value of the property being based on current and projected future use.
- ❑ This Act stripped blacks of the right to own land and even reside outside demarcated areas without property authorisation from the relevant authority.

### ***The Native Administration Act No. 9 of 1937***

- ❑ The Native Administration Act of 1937 strictly prohibited Africans from acquiring land in urban areas.

- However, due to the dependence of white industries on cheap black labour and because of lack of social and economic opportunities in the rural areas, African urbanisation became inevitable. This then led to the mushrooming of informal settlements such as Orlando, which were characterised by overcrowding and poor living conditions.

### ***The Housing (Emergency Powers) Act of 1945***

- The Housing Act of 1945 empowered the Minister through the Housing Boards to expropriate freehold land.
- These Housing Boards facilitated the construction of township houses, and their tenure system was limited to rental. A classic example was the forced removal of black people from Sophiatown and their relocation to Meadowlands.
- There was also a clear specification set out in the national legislation that township housing should be in the form matchbox houses and hostels funded by the central government, but the funding was unequal and race-based.

### ***The Group Areas Act 41 of 1950***

- The Group Areas Act 41 of 1950 was used to forcibly remove blacks, coloureds and Indian people from designated white areas.
- This Act was used to control the acquisition of immovable property and the occupation of land, as group areas would be established for the sole use and occupation of a particular racial group.
- When people who were disqualified from residing in a particular area moved to another area, their immovable property would then be automatically owned by the state.

### ***The Group Areas Act 39 of 1966***

- The Group Areas Act 39 of 1966 was complementary to the Group Areas Act 41 of 1950 and aimed to consolidate the law relating to the establishment of group areas, as well as to regulate the acquisition of immovable property and occupation of land and premises by non-whites.

- This Act permitted a person to stay on or occupy land or premises, but only if the person was a bona fide employee or servant of the state, or a bona fide visitor for a total of not more than 90 days in any calendar year of any person residing on the land or premises, or was a bona fide scholar attending a public school.
- The South African Police Force was empowered to enforce the provision of the Act, and also empowered to enter premises and land without a warrant when investigating any violations of the Act.

#### ***The Urban Black Council Act No. 79 of 1961***

- Through the Urban Black Council Act of 1961, the apartheid government further imposed the self-government system for black affairs at the municipal level. This was intended in order to manage the townships, but the Urban Black Councils were to remain subservient to the relevant Minister.
- The Urban Black Council had no tax and political base, nor the support of black communities as there was poor service delivery in the townships.

#### ***The Black Local Authorities Act of 1982***

- The Black Local Authorities Act of 1982 was intended to create the town or municipal councils for blacks in townships, but these structures were strongly opposed by communities.
- Municipal Councillors at the time were not viewed as legitimate political representatives nor as leaders of the community, thereby indicating how government structures without a democratic foundation lack credibility, integrity and accountability to govern or to represent communities.

#### ***The Black Communities Development Act No. 4 of 1984***

- The Black Communities Development Act of 1984 initially operated as a group areas act for the black population outside the homelands, providing for the controlled development of new African townships upon land otherwise governed by the Group Areas Act and designated for other non-black population groups.

#### **4.3.2 Remedial legislative measures**

- Between 1991 and 1997, a remedial legislative framework was developed to deal with injustices and inequalities precipitated by discriminatory and racially-based laws. The following remedial frameworks were developed: the Abolition of Racially Based Land Measures Act of 1991; the Reconstruction and Development Programme; the Conversion of Certain Rights into Leasehold or Ownership Act No. 81 of 1988; the Upgrading of Tenure Rights Act 1991; the Constitution of the Republic of South Africa, 1996; the Land Tenure Act of 1996; the Extension of Security of Tenure Act 62 of 1997; the Housing Act No. 107 of 1997; Housing Policy: Breaking New Ground; and the Prevention of Illegal Occupation of Land Act of 1988.

##### ***The Abolition of Racially Based Land Measures Act of 1991***

- This Act was promulgated to repeal all racially-based and discriminatory laws that related to land ownership and use.
- It repealed Acts such as the Land Act of 1913, the Native Trust and Land Act, and the Group Areas Acts of 1950 and 1966, meaning that, irrespective of race any person with necessary means could occupy and own land in any part of the country without fear of being prosecuted.

##### ***The Reconstruction and Development Programme***

- The Reconstruction and Development Programme (RDP) introduced an integrated socio-economic policy framework and was aimed at eradicating legacies of the past by redressing the past inequalities and building a united, vibrant and democratic South Africa.
- The RDP outlined the following objectives: creation of equal opportunities for all South Africans to develop to their full potential; boosting productivity and household income through job creation, productivity and efficiency; improving conditions of employment and creating opportunities for all to sustain themselves through productive activity; improving living conditions through better access to basic physical and social services, health care, and education and training for

urban and rural communities; and establishing a social security system and other nets to protect the poor, the disabled, the elderly and other vulnerable groups.

- In view of the injustices of forced removals and historically denied access to land, the programme identified a need to establish a comprehensive national land programme that would encourage the use of land for agricultural purpose to raise income and productivity, strengthen property rights of communities already in occupation of the land, and to provide access to those who were previously denied and to restore land to the disposed through land restitution.

### ***The Conversion of Certain Rights into Leasehold or Ownership Act No. 81 of 1988***

- The Conversion of Certain Rights Act (81 of 1988) came into operation on 1 January 1989 by virtue of proclamation 226 of 1988 and greatly guided the reform of the urban tenure system for township properties. The Act empowered the Director General of the Provincial Administration to grant a right of leasehold or full ownership to the holders of the following permits: site permit, certificate of occupation, residential permit and trading site permit.
- It must be noted that the leasehold certificate mentioned above is automatically converted into freehold in terms of Section 2 of the Land Tenure Act 112 of 1991, and that it is not a 99-year leasehold as envisaged in terms of Section 6A and 6B of the Black (Urban Areas) Consolidation Act 25 of 1945. The aforesaid Act was repealed with effect from 1 January 1989. Consequently, owners of properties held by leasehold certificates started to enjoy perpetual ownership as leasehold rights were upgraded to full ownership rights.
- The Director General of a Provincial Administration or a delegated person, in determining entitlement to a property, would have to first conduct an enquiry to determine that the affected site is not disputed and that a person to be granted a leasehold or full ownership is the correct one. After the certification of this process, the leasehold or full ownership would be registered with the Registrar of Deeds, on condition that the land was being registered as the leasehold or freehold surveyed and the general plan was approved by the Surveyor-General.



- In cases of ownership disputes over these properties, the Act clearly mentions that a quasi-judicial forum should be established and that independent, well qualified people with sound knowledge and skills such as legal practitioners should preside over these cases, and that proceedings shall be transparent, fair and apply an *audi alterem* rule, and that parties shall be entitled to legal representation and, if a person is aggrieved by the determination made by the presiding officer, he or she may pursue a judicial review process.

### ***The Upgrading of Tenure Rights Act 1991***

- This Act is complementary to the Conversion of Certain Rights Act (81 of 1988), and in terms of the Upgrading of Tenure Rights Act (Act No. 112) of 1991, less secure tenure rights, which are common in black informal and formal urban towns such as Orange Farm and Soweto, were converted into full ownership rights.
- These insecure tenure systems could automatically be upgraded by the provincial or local governments only if the general plan is approved and the township register opened; and if not, the township establishment processes must first be done prior to the upgrading process.

### ***The Constitution of the Republic of South Africa, 1996***

- The Constitution is the supreme law of the country and recognises and takes into account the socio-economic and political injustices of the past. It is intended to heal our previous divisions and establish a society based on democratic values, sound laws and justice and fundamental human rights, with its critical component being the Bill of Rights.
- The Section 25 of the Constitution provides that the state is required to adopt remedial measures to enable people to gain access to land on an equitable basis, and to also adopt legislation that would ensure security of tenure for all or redress any situation of people whose land tenure rights are insecure due to discriminatory laws and practices of the past. Section 25(5) of the Constitution deals with the issue of socio-economic rights, and that the state should implement measures aimed at land redistribution, while Section 25(7) grants the right to restitution for

those people and communities who were dispossessed of their properties as a result of discriminatory legislation after 1913.

- Section 26 states that everyone has a right to have access to adequate housing, and the state may not interfere with this right unless justifiable. This section also obligates the state and other entities or people to desist from preventing or impairing the right of access to adequate housing, and places a duty on the state to adopt appropriate measures to ensure the right to access adequate housing is effectively realized on a progressive basis. It must be noted however that only the state is responsible for the provision of housing, but that individuals and other agents must also provide an enabling environment, be it legislative or otherwise for the state to fulfil its duty.

### ***The Land Tenure Act of 1996***

- The Land Tenure Act of 1996 seeks to protect the rights of labour tenants who live and grow crops or graze livestock on farms.
- The Act also provides that they cannot be evicted without a court order, nor if they are a vulnerable group, i.e. children, the disabled, women or above 65 years old.

### ***The Extension of Security of Tenure Act 62 of 1997***

- The Extension of Security of Tenure Act 62 of 1997 seeks to protect the occupational rights of farm workers and people living in rural areas, including their rights to live on the land and other rights such as receiving visitors and access to water, health and education.
- The Act also regulates the conditions and circumstances under which people who have a right to residence have their tenant status terminated or are evicted from land, and offers special protection to occupiers who are over 60 and have lived on the land for ten years or more, or are employees or former employees and because of ill health, injury or disability are unable to supply labour. The Act also spells out the rights of owners, protecting them against arbitrary evictions.

### ***The Housing Act No. 107 of 1997***

- The Housing Act No. 107 of 1997 gives effect to the right to have access to housing, but also spells out different roles and responsibilities of the three spheres of government in the housing delivery value chain.
- This Act also emphasises that housing development should entail the establishment and maintenance of habitable, stable and sustainable public and private environments to ensure that communities and households are viable and located in areas with socio-economic opportunities and amenities, and are comprised of permanent structures with secure tenure, access to water, sanitary facilities and domestic energy supply.
- This Act additionally paves the way for local government to be involved in housing development.
- Section 10A is the most controversial section of the Act, as it prohibits a beneficiary from disposing of the subsidised house whether for income or no financial return, as a property clause prohibits the sale of the property within 8 years after the allocation of a subsidised property by the state. Instead, it says the beneficiary must first “return” the house to the Provincial Department, if the beneficiary contemplates disposing the property.
- This section of the Act is said to be in contrast with the constitutional provision of ownership, as it takes away a right to alienation and provides no compensation whatsoever. Furthermore, it does not take into account that people might want to dispose of their property due to economic progression or migration for better socio-economic opportunities.

### ***Housing Policy: Breaking New Ground***

- Breaking New Ground is a revised framework for the development of sustainable human settlements based on the principles contained in the White Paper on Housing.
- This policy framework was adopted by Cabinet in 2005, and seemed to shift from focusing on quantity of houses delivered to sustainable human settlements with balanced economic growth and social development, and quality houses with

variety of tenure options such as individual title, sectional title and rental, which are achievable through the state sponsor's subsidy programmes.

**Breaking New Ground defines its four primary ends as follows:**

- Sustainable Human Settlement: depends on sustainable development, wealth creation, poverty alleviation and equity.
- Integration: spatial restructuring for sustainable human settlements requires an inter- and intra-governmental approach as well as the integrated planning and coordination of all spheres of government.
- Housing assets: ensure that housing can be used for socio-economic and financial benefit.
- Upgraded informal settlements: eradication of informal settlements and their integration to the broader urban fabric to overcome spatial, social and economic exclusion.

***The Prevention of Illegal Occupation of Land Act of 1988***

- The Prevention of Illegal Occupation of Land Act of 1988 put in place procedures for the eviction and prohibition of illegal occupants. The Act applies to all occupiers of land without the consent of the owner and emphasises that evictions can only be undertaken through a court order and after complying with a number of requirements.
- The eviction notice must be served within 14 days after the court order has been issued and must state the reasons for eviction.
- The Act requires that a court, prior to issuing an eviction notice must consider the situation of any vulnerable groups among the illegal occupiers, including the elderly, children, the disabled and women-headed households.
- In the case of an eviction application being made by an organ of the state, the court prior to granting an order for eviction must consider the circumstances under which the illegal occupier occupied the land and erected the building/s in question.

#### **4.4 FINDINGS: THE INFLUENCE OF CIVIC RESISTANCE IN THE EVOLUTION OF THE TENURE SYSTEM FOR URBAN BLACK HOUSING**

- In terms of urban township politics, from 1979 there was an emergence of a radical civic movement which was rooted within communities, as the introduction of Black Local Authorities was strongly opposed and abhorred.
- In 1983, the anger of residents towards councillors mounted, as councils increased rents and evicted defaulters, followed by lack of services fuelled by allegations of corruption.
- The Soweto Civic Association then called for a rent boycott, and as a result the Soweto City Council became ineffective with no source of income, and the Council consequently ended up in great debt.
- The Soweto community, led by the Committee of Ten with the late Dr Motlana as chairperson, and with other prominent professional figures under the umbrella of the Soweto Civic Association, then made the following demands:
  - a. Transfer of all rented properties to the occupants
  - b. Writing off all arrears incurred by households in rent, municipal services and electricity
  - c. One city, one tax base
  - d. Affordable charges
  - e. Upgrading of hostels and townships.
- By 1989, both the government and the Soweto Civic Association eventually came to the realization that neither side would emerge with a clear victory in this conflict. This recognition led to a new era of negotiations, and the Soweto Peoples' Delegation was formed by the Soweto Civic Association to start negotiations with the authorities with the objective of developing short-term and long-term measures that eventually led not just to the end of the rent boycott, but also to urban land tenure reform and the future democratic structures in local government.
- These negotiations resulted in the signing of the Greater Soweto Accord on 24 September 1990 between the Soweto Peoples' Delegation and the Councils for Soweto, Diepmeadow and Dobsonville.

- The Soweto Accord was a serious milestone in terms of black urban politics as it set out the framework for an urban transition and a drastic shift in the housing policy. The effect of this was that all municipal-owned houses were to be transferred to individual households who had been mere tenants for decades, and the project was later known as the *Transfer of Housing Project*, an urban tenure reform programme.
- Due to mass mobilisation and resistance, the influx control and the legal restrictions that denied a black person from owning property in urban black areas were repealed, and eventually in 1989 the government agreed to a Greater Soweto Accord whereby rent and services arrears were written off and the government committed to the transfer of houses to the people

#### **4.5 FINDINGS: TRANSFER OF HOUSING PROJECT AND PROCESS**

- The Transfer of Housing Project relates to the upgrading of insecure tenure rights into full ownership rights, the objective being to promote home ownership to the black urban township households. This could be viewed as an impetus for socio-economic benefits such as property value improvement and can also be used for investment purposes.
- As already stated, the pressure exerted by civic bodies on local authorities and the Provincial Government resulted in the Greater Soweto Accord, which inter alia committed all concerned to the concept of “transfer of houses to the people”. During negotiations in the widely representative Central Witwatersrand Metropolitan Chamber, many practical problems were identified with regard to this action and the solutions were found in the implementation strategy, known as the sixteen-step process from receipt of an application to property registration with the Registrar of Deeds.
- The Discount Benefit Scheme was instituted in terms of Section 3(5) b of the Housing Act, No. 107 of 1997, as a subsidy mechanism to transfer freestanding houses to their qualifying occupants. The scheme was only applicable to state-financed property first occupied before 1 July 1993 and housing units or stands

contracted for by 30 June 1993, if allocated to qualifying individuals by 15 March 1994.

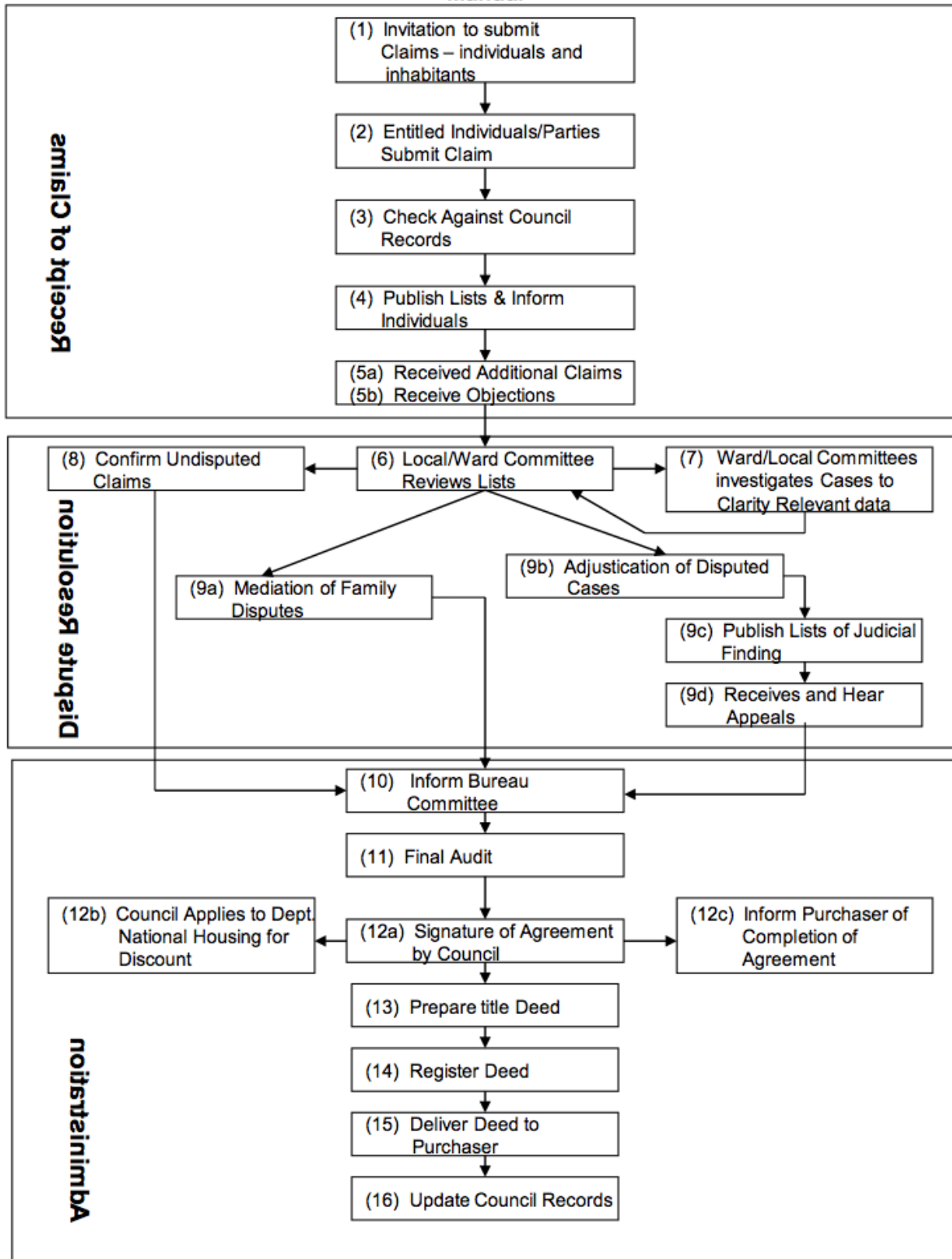
- The discounted benefit was for an amount not exceeding R7 500, with household income not taken into consideration. Qualifying occupants of state-financed rented family housing units could buy their housing units at a discount, to a maximum of R7 500 on the selling price. If the selling price was R7 500 or less, the discount benefit was limited to the lesser amount and the sales debtor was able to acquire the housing unit without making a further capital contribution. If the selling price exceeded R7 500, the purchaser was required to pay the excess.
- The Discount Benefit Scheme was later changed to Enhanced Extended Discount Benefit Scheme to accommodate properties whose historical costs exceeded R7 500, its policy intent being to promote home ownership by stimulating and facilitating the transfer of public housing stock to qualifying beneficiaries.
- In cases where conveyancing services were required, the municipality or Provincial Department of Human Settlements would incur the cost, and in terms of its financial records, the owners of the properties would be authorised to grant the discount on the historical construction cost, and be eventually removed from the assets register of a municipality.
- The implementation of the Transfer of Housing Project commenced in 1995 with the creation of a Housing Transfer Bureau within the area of each municipality. This was established as a partnership between the new non-racial councils and the Provincial Government under rules prescribed by the Provincial Directive.
- The two project management firms were Africon Engineering International and Municipal Management Council, and the initial phase of the project entailed undertaking the following preparatory work: preparation of maps, title deed searches, desktop survey, occupation survey, beneficiary communications, and targeting and training of public officials.
- Another critical aspect in the transfer of housing process was community facilitation and dispute resolution, which is when the housing or ownership disputes are identified and then resolved through the adjudication process. This is a quasi-judicial forum established in terms of Policy Guidelines: Enhanced Extended

Discount Benefit Scheme, with people trained in law and admitted as attorneys by the Law Society to act as adjudicators in these cases, with the procedure being as follows:

- ☐ The claim forms containing information of the disputing parties, together with the council files would be submitted to an adjudicator and this would form part of the enquiry.
- ☐ Any notes or observation made by the local committee member would form part of the enquiry.
- ☐ The adjudicator would then hear evidence from the disputing parties or their legal representatives or from witnesses who have background knowledge about the house in dispute. After all the evidence has been heard by the adjudicator, s/he will evaluate it and apply relevant legal principles to the facts found to have been proven.
- ☐ The adjudicator would then make his/her determination, and if the party is found to be aggrieved, s/he would make notice of appeal within thirty days of the adjudications and the matter would be referred to the Appeal panel.
- ☐ The Appeal panel consisting of three independent adjudicators will hold an appeal enquiry in which they may call witnesses, listen to any other evidence or seek clarification on certain issues. At the conclusion of the Appeal proceedings, the three adjudicators will deliberate and make their determination.
- ☐ If a person is still aggrieved after the appeal has been finalised, s/he might possibly decide to take the matter to the Supreme Court for a review.



**Figure 2:16 Step Transfer process for Old TORPS:Source: Transfer of Housing Manual**



In summary, the sixteen steps of the Transfer of Properties were divided into three sections, namely: receipt of claims or title deed applications, dispute resolution and administration. These phases were critical in managing the milestones of the regularisation or transfer process, from application to property registration, and to the ultimate issuing of title deeds and the cost thereof.

- The land titling programme in urban areas is viewed as empowering the poor, improving market efficiency, land management and administration, as well as improving urban planning, the housing situation and access to services.

#### **4.6 FINDINGS: IDENTIFICATION AND ROLES OF PROJECT STAKEHOLDERS IN THE TRANSFER OF HOUSING PROJECT**

- Stakeholder management is a critical component in the successful delivery of any project and stakeholders can be either individuals or groups that are affected thereby. In the Transfer of Housing Project, there were statutory stakeholders such as National, Provincial and Local governments who were bound by the principle of cooperative government, which entails working together and supporting each other to provide South African citizens with a package of services.
- This project also involved the non-statutory stakeholders in the form of interest groups, civic associations and various local political organisations that operated as local committees by being the eyes and ears of the community.
- The purpose of this inclusive approach was to promote and ensure fairness, equity and transparency in the transfer of housing process, and also to ensure that the Housing Transfer Bureau used the allocated resources optimally and achieved the projected objectives.
- Local Committee Structures were comprised of community members across political spectrums, who assisted in the identification of rightful tenants and disputed properties. Furthermore, as local representatives they were elected to the committee because of their local knowledge of the particular area, the people staying there and the history of the houses in question.

#### **4.7 FINDINGS: CHALLENGES IN THE PROJECT IMPLEMENTATION PHASE**

- Every project has challenges that may impact on the set timeframe, scope of work and budget, but in this project the challenges encountered were surmountable and manageable.
- These challenges were detected during the process of identifying rightful tenants and determination of entitlement, as the occupancy rights of the urban black township households were held under the permit system that granted subordinate, insecure and limited rights and were subject to “pass laws”. This was followed by the new political dispensation, through urban tenure reform, converting these rights into full ownership rights in the form of title deeds. However, after a painstaking process of determining who had entitlement and identifying beneficiaries, this process was hindered and complicated by the following factors:
  - a. Loss of council housing files and records
  - b. Death of permit holders and unreported family changes
  - c. Family disputes among siblings
  - d. Informal sale and transfer of tenancy not reported to the municipal offices
  - e. Perceived illegitimacy and administrative incompetence of the former black councils.
- Despite the above-mentioned challenges, the project stakeholders managed to submerge their petty political differences and came up with a number of alternatives and solutions. This is because they understood the importance of the transfer of housing or land titling programme, which entails delivering real rights to occupants of land and property and not simply to provide security of tenure, as well as enabling title holders to use their property as collateral for obtaining formal credit to invest in business and home activities, improve land administration, improve the tax base for the municipality, and encourage and promote home improvement and ensure better access to urban services.

#### **4.8 FINDINGS: DELIVERY AND PERFORMANCE STATUS OF THE PROGRAMME**

- The upgrading and conversion of land tenure from rental to full home ownership is generally considered an improvement in socio-economic status, as home ownership not only provides shelter, but also has socio-economic benefits such as property value improvement and can also be used for investment purposes, and the programme's performance is covered in Figure 3 below.
- Zola and Orlando are the only townships in Soweto that were selected by the Gauteng Department of Housing for the Twenty Priority Township Programme aimed at stimulating local economies and alleviation of poverty. The programme entails the development of backyard rental units to create more rental stock in the old township as a contribution to improving living conditions and to enable households to generate additional income through rental. For households to benefit from this programme, they had to demonstrate that they possess real rights over these properties in the form of title deeds.
- In determining the statistical project performance of the Transfer of Housing Programme, the researcher had to access the programme database from the Johannesburg office of the Gauteng Department of Human Settlements. The system is called Torps and was developed in Visual Basic and SQL Server.
- This system is connected to seven municipal offices via a WAN and it controls and monitors each milestone of the transfer of properties, from receipt of the claim, identification and resolution of housing disputes to the final state of property registration with the Registrar of Deeds.

**Figure 3: Programme performance per location between 1998 and 2016**

<b>RENTED PROPERTIES</b>	<b>PROPERTIES CLAIMED</b>	<b>REGISTERED</b>	<b>OUTSTANDING</b>
ORLANDO	2 206	2 076	130
ORLANDO EAST	5 201	5 125	76
ORLANDO WEST	2 035	2 004	31
ORLANDO WEST EXT	774	770	5
ZOLA	5 170	4 946	224
ZOLA EXT 1	72	65	7
<b>TOTAL</b>	<b>15 458</b>	<b>14 986</b>	<b>472</b>

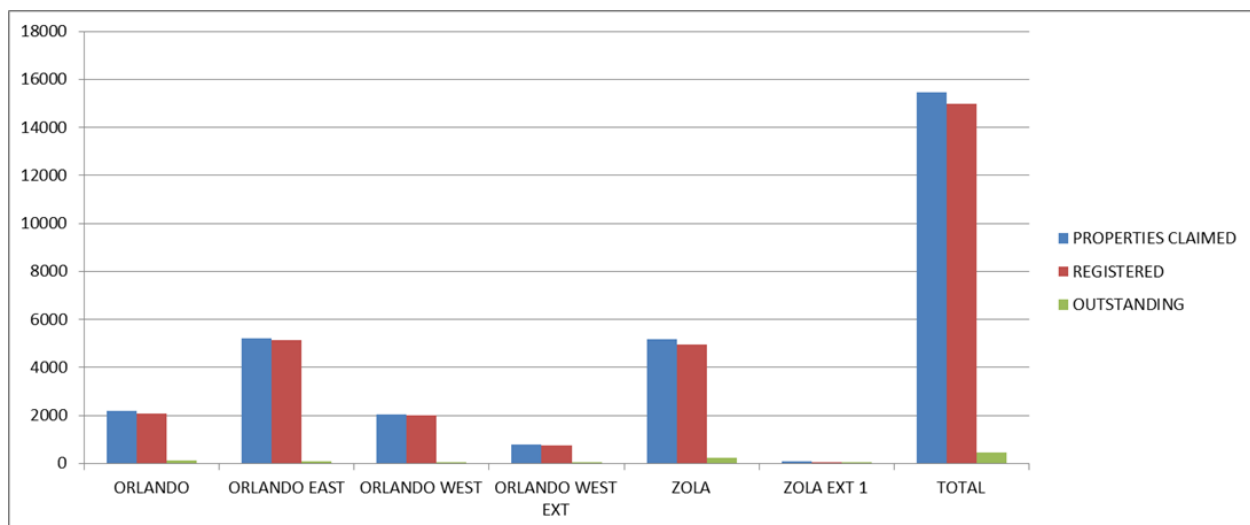
**Source: TORPS Programme**

- Figure 3 above reflects the project's performance in different township locations, namely Orlando proper, Orlando East, Orlando West, Orlando West Extension as well as Zola proper and Zola Extension in terms of the number of properties or households that have applied for title deeds, applications already registered with the Registrar of Deeds, and those that are outstanding because they have either yet to be fully resolved or happen to be disputed.
- The above statistics reflect the number of properties claimed (15 458), the number of properties registered (14 986) and those still outstanding (472). Based on these

figures, this is clearly indicative of government's commitment and optimal use of resources in the urban tenure reform process as numbers indicate that the project is 97% complete and that a mere 3% is still outstanding.

- It must be noted that the statistical report on the Annual Calendar of the Gauteng Department of Human Settlements is not exclusively based on the sample areas, but is reflective of the annual departmental performance on title deeds or tenure reform that covers the entire Gauteng Province in terms of municipal jurisdictions. These include Johannesburg, Ekurhuleni and Tshwane Metropolitan Councils as well as the Sedibeng and West Rand District Municipalities with their local councils.

**Figure 4: Graphical depiction of the programme's performance**



As indicated in Figure 3, the project is on the verge of completion with a mere 3% yet to be registered, but it must be noted that before these properties can be registered, there are three activities that must be undertaken in order to comply with the registration process. These are as follows: a land survey; renumbering of stands and houses in the Greater Soweto Area (as it was never anticipated that urban black households would ever enjoy secure tenure rights), and township formalisation and proclamation. These are elaborated upon in greater detail below.

a) **Land Survey**

The purpose was to identify properties owned by government, be it land, social or residential properties, and this involved deed searches, searches of the Department of Public Works' databases and other provincial records and municipal valuation roles, including the comparison of government studies in relation to the then current and potential use of the land and other properties for urbanisation purposes.

b) **Renumbering of stands and houses in the Greater Soweto Area**

A geographic information system was developed to suit the needs of the then Department of Land Information for the old Soweto Administration or former South Metropolitan Local Council. New numbering was to enable delivery, maintenance and emergency services to locate specific houses more easily.

c) **Township Formalisation and Proclamation**

This project entailed the formalisation or establishment and opening of township registers of various townships in Gauteng Province created in terms of the Black Communities Development Act of 1984 and the Upgrading Tenure Rights Act 112 of 1991. Townships and extensions and accurate descriptions of the underlying land were identified and an overall business plan was compiled for the establishment of settlements. Detailed individual business plans were then assembled indicating the statutory, legal and administrative processes necessary to formalise these settlements. Technical aspects such as geotechnical surveys, engineering service reporting, and registration of servitudes, subdivisions and consolidations were conducted to reflect the settlements' status. Transfer of the settlement land to the relevant municipality was facilitated and disposal strategies developed.

#### **4.9 FINDINGS: IMPACT OF THE PROGRAMME ON BENEFITTING HOUSEHOLDS**

According to de Soto's views on property rights, the formalisation of rights in housing and other assets is grounded on the assumption that titles constitute an essential component for poverty eradication in developing countries, as property rights have an impact on the economy and development and serve as an incentive for capital investment.

He further argues that efficient and committed state institutions could contribute to fast tracking the formalisation of property rights for the poor, thereby enabling them to extricate themselves from poverty and unemployment, as the formalisation of property rights through land titling programmes would allow the poor to secure loans by utilising their property as collateral. This in turn will provide impetus towards capital formation and enable access to infrastructure and services.

In support of de Soto's views on property rights, Tomlinson (2007:17) argues that such rights might have the following socio-economic impacts on benefiting households:

- As a social asset, a housing asset provides a safety net for the family and a reachable base for the household in terms contact, communication and community interaction and support.
- As a financial support, the housing asset could be sold for income or to acquire a mortgage loan for property renovations, with the result that the property value will appreciate.
- As a productive or economic asset, a housing asset could be used for economic development as some backyard structures or rooms could be used for rental or to operate a business to generate income.

In contrast to de Soto's theory on property rights and their effect, in terms of the South African context, Tomlinson (2007:26) comes with a different view that low-income households, such as in Soweto, tend to view their housing asset in a social and cultural context rather than a financial sense. This is further elucidated below:



- Houses are viewed as a family asset rather than an individual asset, thus a family member cannot sell it without the consent of others.
- Violation of social and cultural pressure by selling a “family house” in order to move to a suburb can lead to family strife.
- Retaining a township house, even if a person has moved to the suburbs enables one to retain one’s social and cultural contact in the township.
- The retention of a house is a symbol of respect for the memory of parents and becomes a venue to conduct family rituals and for family gathering.
- Owning several properties limits the risk of being victim to the economic situation of a particular area.

In terms of the state, the titling programme also benefits municipalities and provincial government in terms of revenue and tax base, because when households receive title deeds for their properties, apart from paying for municipal services, they are also expected to pay property tax and rates.

#### **4.10 CONCLUSION**

As a general rule, land ownership was not available to blacks in urban areas. It was, however, possible for blacks to acquire rights of occupation in these areas, between 1955 and 1968, through a 30-year lease scheme. This 30-year lease scheme was terminated in 1968, when the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters (GN R1036 of 14 June 1968) came into effect and applied in the former black areas.

Even regulations under the Black Community Development Act and Black Administration Act relating to township establishment provided for various forms of tenure, though these tenure systems provided lesser rights to urban black residents than full registered ownership and were considered inferior. Furthermore, the town planning ordinances were traditionally used for township establishment in limited former white areas, and were not intended as instruments for the provision of tenure security for urban blacks or poor.

Since 1994, ownership of land in South Africa has been subject to a number of legal and administrative changes. Consequently, the right to property became enshrined under Section 25 of the Constitution of the Republic of South Africa Act, 1996, which states that no one can be deprived of property except in terms of general application of the law, and no law may permit arbitrary deprivation of property.

The 1036 regulations provided that immovable property could only be lawfully occupied by persons qualifying for such occupation in terms of permits issued by the local authority, and these permits were fragmented as follows: site permit for people allocated a site on which they have erected a dwelling; certificate of occupation for a dwelling that has been sold to an individual by a local authority; residential permit for people renting a dwelling from a local authority to reside with their immediate family; lodgers permit for individuals or households who were sub-tenants; and the hostel permit for individuals wanting to rent a bed in a male hostel, the holders of which were predominantly migrant workers.

History has left a legacy upon the landscape of South African cities; a stark landscape marked by segregation and marginalisation underlined by the old planning system that has left modern cities with severe spatial integration difficulties. The housing landscape in South Africa during the pre-1994 period was characterised by a spatial dichotomy whereby the white dominated areas developed in a more sustainable manner, while the black dominated areas were marked by poverty and underdevelopment.

The country lacked inclusive housing development policies and this led to spatial fragmentation, among other things, with certain groups of people, especially blacks, being pushed to the periphery. This spatial landscape was further skewed by its land ownership patterns. Housing delivery for black communities was hopelessly inadequate as compared to population growth. This under-delivery was not accidental but as a result of a designated legislative and policy framework which ensured that black communities were deprived of decent housing and basic services.

Subsequent to the democratisation of South Africa, the ANC-led government, despite various challenges committed resources, repealed all discriminatory land and tenure related policies and laws, and came up with a remedial policy and legislative framework, such as The Discount Benefit Scheme which was later changed to Enhanced Extended Discount Benefit Scheme, to promote home ownership by stimulating and facilitating the transfer of public housing stock to qualifying beneficiaries. The intention was that those who were discriminated against in the past could now enjoy the socio-economic and financial benefits associated with full ownership or secure tenure rights.

The Peruvian economist, de Soto has argued that if low-income groups are given title deeds, they will be able to use them as collateral for obtaining formal credit from financial institutions to finance their small businesses or business idea. He further states that the possession of a title deed creates an enabling environment for property transactions to occur, which could lead to upward socio-economic mobility. This argument, however, does not take into account that in the South African context, the affordability constraints and availability of low-income housing stock deter the low-income owners from moving houses or to other provinces, and that in the black community houses may be viewed as cultural and social assets rather than an economic asset.

Nevertheless, the success of the remedial policies, legislation and programmes can be seen in the project performance of the Enhance Extended Discount Benefit Scheme in both Zola and Orlando locations, in view of the number of households that applied for title deeds and the number that have subsequently been bestowed with full ownership rights for their properties that they have been renting for years.

Through the Land Regularisation or the Transfer of Housing Programme as an urban version of the Land Reform Programme, the Gauteng Department of Human Settlements in partnership with the City of Johannesburg sought to redress tenure insecurity by formalising the occupational rights of households/groups into real rights. This included facilitating their registration with the Registrar of Deeds, as security of tenure is a cornerstone and fundamental principle of the government subsidy programme, as well as

addressing the apartheid spatial planning through the urban infrastructure improvements. The key deliverables of the project are the finalisation and proclamation of townships, property sub-division and consolidation, property identification and entitlement verification, registration of title deeds and updating of the municipal and provincial governments' assets registers.

## **CHAPTER FIVE: RECOMMENDATIONS AND CONCLUSION**

### **5.1 INTRODUCTION**

The purpose of this chapter is to provide a conclusion to the research study undertaken, but also to make recommendations based on the findings in order to accelerate and promote an effective and efficient urban tenure reform programme in the former black urban settlements such as Soweto. As already stated, despite the study being focused on Zola and Orlando, the pre-1994 housing scenario in black townships is similar in terms of typology, design, reasons for their establishment and tenancy regulatory framework. For this reason the national government uses the Enhanced Extended Discount Benefit Scheme to redress the tenure inequalities in all these settlements, the implication being that findings on both Zola and Orlando locations will be relevant and applicable to all these urban townships.

Here is a recap on what was covered by the previous chapters:

- Chapter one indicated and briefly discussed five topical issues, namely: background of the study, problem statement, purpose statement, significance of the study and research methodology. It provided a general overview and rationale to the study.
- Chapter two provided definitions of concepts, such as tenure rights, urbanisation and migration and provided an International and African overview of land tenure reform, covering background, legislative framework, merits and demerits as well as the evolution of tenure rights in South Africa.
- Chapter three outlined the research methodology and research methods used to carry out this study, and further justified why such methodology and methods have been undertaken. The chapter also looked at the value that these tools added to the objectives of this study. In terms of research methodology, a qualitative approach was adopted with document analysis being the predominant tool used to collect data.

- Chapter four presented findings based on the information collected through the analysis of government reports, policy and legislative frameworks, project performance reports, books and articles in order to contribute to the body of knowledge with regard to urban development and tenure reform in black urban settlements, such as Orlando and Zola in Soweto township.

This chapter provides a conclusion to the research study and makes recommendations on measures required to address challenges and/or to accelerate the tenure reform initiative for Soweto households and other black urban townships.

The research study was guided by the following questions:

- What is the historical background of the urban land tenure system in black townships?
- What were the urban regulatory and governance frameworks?
- What was the influence of civic resistance?
- What is the Transfer of Housing Process?
- Which stakeholders were involved and what was their role in the project?
- How were housing disputes resolved?
- What is the delivery and current status of the programme?
- What is the impact of the programme on the benefiting households?

Prior to providing a conclusion to the study and making recommendations on measures required to accelerate the urban tenure reform initiative for Soweto and other black urban households, it is important to determine whether the research objectives have been achieved. These objectives were as follows:

- The provision of an overview on the history of tenure rights in South Africa.
- Investigation of the legislative and policy frameworks that had an impact on the tenure rights of urban township households.
- Investigation of the state's intervention and remedial programme which seeks to redress the tenure rights and system of urban households.

## **5.2 SUMMARY OF THE RESEARCH STUDY**

In an effort to ensure that the research study succeeded in addressing or actualising the research objectives, it is critical to determine whether the following research questions have been addressed.

### **5.2.1 What is the history of urban tenure rights in South Africa?**

The Native Land Act of 1923 effectively prohibited blacks from owning land in South Africa, limiting a mere 7% of the land for black ownership in especially demarcated reserves. The effect was crippling for people as their livelihood depended on land for farming and cattle, and whose culture and society were associated with the land upon which they lived (Seriti:1987).

In South Africa, the questions of tenure security and urban access have historically been intricately linked. For this reason, the purpose of the urban land tenure reform is to address tenure insecurity of households, the homeless and landless that resulted from apartheid planning, which characterised urban spatial policy in terms of the structure, layout, governance and functioning that reflected segregated land use and denial of socio-economic opportunities of the urban black population (Cousins, 2014:5).

A policy on black urban locations and limitations on access to residential rights was firmly established as early as 1910, and by the late 1950s and 1960s, urban resettlement was a cornerstone of the apartheid strategy to reduce the size of the African population in urban areas. The apartheid vision saw urban inhabitants superfluous to white needs living in ethically defined homelands kept separate and well away, the development of industries on the borders of Bantustans and the denial of urban residential rights.

The Natives Laws Amendment Act of 1937 and the Natives (Urban Areas) Consolidation Act of 1945 further divided South Africa into prescribed stricter control measures to control black people's movement between the "white" towns and "black" rural areas. All these laws reflected the predominant view of the white community that the urban areas were to

be regarded as enclaves where European interests were paramount and within which natives may only be permitted as a source of cheap labour and little else.

Then in 1950 and 1966 respectively, the Group Areas Acts were introduced, and consequently millions of people were evicted from their places of residence within the urban freehold areas. African households where people resided were destroyed to force them to move to formal townships on the periphery of the white cities and towns, while others were removed to the Bantustans, as in the small areas of rural land set aside for black occupation.

Mass housing construction consequently took place in black townships on an unprecedented scale and these dwellings were financed by government and built by the larger municipalities, such as Johannesburg City Council. The tenure rights of occupants were restricted to ensure temporary residence, and black people qualifying to be in urban areas could obtain permits issued by the municipal authority to occupy a municipal-owned house in the black urban areas, but only certain people were eligible for these rights.

By 1978, various permits were issued to qualifying blacks in terms of Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters of 1968. These permits were as follows: regulation 6 or site permit, where a person was allocated a site and upon which he has erected a dwelling; regulation 8 or certificate of occupation, where a person would “buy” a dwelling from a local authority; and regulation 7 or a residential permit, where a permit was granted for a person renting a dwelling from a local authority to reside with his immediate family.

In 1978, it became possible for blacks to register rights of 99-year leaseholds over a property in black urban areas. The introduction of the 99-year leasehold signified an important shift in government policy with regard to land ownership for blacks in urban areas, as prior to 1978, blacks could only obtain occupation rights to houses with no rights to the land on which the houses had been erected.



After the introduction of the leasehold scheme, blacks could obtain a registered real right to the property as well, but the black community did not buy in and as a result the leasehold scheme was unsuccessful. In 1986, the Black Communities Development Act, 1984 was amended to provide full ownership rights for blacks in urban areas.

On 1 January 1991, the Conversion of Certain Rights into Leasehold or Ownership Act of 1988 was promulgated. In terms of this Act, the implication was that the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters were repealed, and all the Provincial Administrations in South Africa were assigned with a responsibility of converting the occupational rights of tenants of records of pre-1994 state-owned properties in all black urban settlements into full ownership rights, and this is where the Transfer of Housing Project or Urban Land Tenure Reform commenced.

### **5.2.2 Which legislative framework was associated with land ownership rights in South Africa?**

Chapter three answers the above question as it covered the policy and legislative framework developed and enacted during the segregationist and apartheid era, which was the root of the political control and economic domination of Africans by their white counterparts. This policy and legislative framework manifested in the form of denial of land and ownership rights, spatial separation of residential areas according to race and population groups, urban sprawl and poor service delivery to certain sections of the community.

Seriti (1987) argued that various discriminatory laws and practices were developed and their application resulted in extreme inequalities in relation to land ownership and land use, and these laws are briefly discussed below:

- The Native Land Act 27 of 1913 meant that blacks could neither own nor rent land outside designated reserves, and set aside approximately 13% of land for the

majority black population while reserving the rest for white ownership and use, and prohibited black farming on the white-owned land.

- The Housing Act (No. 35 of 1920) institutionalised segregated townships for Africans.
- The 1923 Urban Areas Act (No. 21 of 1923) withdrew the right of land tenure from Africans, and therefore permanent urban residence, as a way of justifying their continuing disenfranchisement.
- The Black Administration Act No. 38 of 1927 was aimed at the effective control and management of the affairs of the black population, and also authorised forced removal of blacks from urban areas.
- The 1931 Transvaal Ordinance enabled municipalities to prepare schemes controlling land use, density, building size and position.
- The 1934 Slums Act enabled the state to destroy existing areas and shacks, and replace them with formal areas and structures.
- The Native Laws Amendment Act (No. 46 of 1937) prohibited Africans from acquiring land in urban areas.
- The Native Urban Areas Consolidation Act (No. 25 of 1945) provided varying degrees of residential tenure security to four different categories of urban residents, namely site permit, residential permit, lodger's permit and the hostel permit.

This chapter also covered the following remedial legislative measures (Royston: 1998) that dealt with the inequalities and injustices of the past, which included the following:

- The Abolition of Racially Based Land Measures Act of 1991, promulgated to repeal all racially-based and discriminatory laws that related to land ownership and use such as the Land Act of 1913, the Native Trust and Land Act, and the Group Areas Act of 1950 and 1966. This meant that, irrespective of race any person with necessary means could occupy and own land in any part of the country without fear of being prosecuted.
- The Reconstruction and Development Programme, which introduced an integrated socio-economic policy framework and was aimed at eradicating legacies of the

past by redressing inequalities and building a united, vibrant and democratic South Africa.

- The Conversion of Certain Rights Act (81 of 1988), which came into operation on 1 January 1989 by virtue of proclamation 226 of 1988. This Act played a pivotal role in guiding the reform of urban tenure system for township properties as the Act empowers the Director General of the Provincial Administration to grant a right of leasehold or full ownership to the holders of the following permits: site permit; certificate of occupation, residential permit and trading site permit.
- The Upgrading of Tenure Rights Act of 1991, which is complementary to the Conversion of Certain Rights Act (81 of 1988). In terms of this Act, less secure tenure rights, which were common in black urban informal and formal towns such as Orange Farm and Soweto, were converted into full ownership rights.
- The Constitution as the supreme law of the country recognizes the injustices of the past, and also takes into account the socio-economic and political injustice of the past and is intended to heal the divisions and establish a society based on democratic values, sound law and justice and fundamental human rights, its critical component being the Bill of Rights.
- The Land Tenure Act of 1996, which seeks to protect the rights of labour tenants who live and grow crops or graze livestock on farms.
- The Extension of Security of Tenure Act 62 of 1997, which seeks to protect the occupational rights of farm workers and people living in rural areas, including their rights to live on the land and other rights such as receiving visitors, access to water, health and education.
- The Housing Act of 1997, which gave effect to the right to have access to housing but also spells out different roles and responsibilities of the three spheres of government in the housing delivery value chain.
- Breaking New Ground, a revised framework for the development of sustainable human settlements based on the principles contained in the White Paper on Housing. This initiative indicates a shift from focusing on quantity of houses delivered to sustainable human settlements with balanced economic growth and social development as well as quality houses with a variety of tenure options, such

as individual title, sectional title and rental, and which is achievable through the state sponsor's subsidy programmes (Department of Housing: 2005).

- The Prevention of Illegal Occupation of Land Act of 1988, which put in place procedures for the eviction and prohibition of illegal occupants. The Act applies to all occupiers of land without the consent of the owner and emphasises that evictions could only be undertaken through a court order and after complying with a number of requirements.

### **5.2.3 What led to the tenure reform initiative for South African black urban households?**

The circumstances that led to urban tenure reform stemmed from the communities' hatred towards the Black Local Authorities Act of 1983, as they became ever-more angry and aggressive towards councillors when rent was increased, defaulters were evicted and shacks or other illegal structures used to accommodate other family members and relatives were demolished. Furthermore, because of non-payment of rental and services, municipalities were in great debt and became increasingly ineffective, and by 1989 both the government and the Soweto Civic Association came to the conclusion that neither side would emerge with a clear victory in this conflict (Royston, 1998).

This recognition led to a new era of negotiations, and the Soweto Peoples' Delegation was formed by the Soweto Civic Association to start negotiations with the authorities. Their objective was to develop short-term and long-term measures that eventually led to the end of the rent boycott and paved the way for urban land tenure reform and the future democratic structures in local government (Royston, 1998).

These negotiations resulted in the signing of the Greater Soweto Accord on 24 September 1990 between the Soweto Peoples' Delegation and the Councils for Soweto, Diepmeadow and Dobsonville. This Accord was a serious milestone as it set out the framework for an urban transition and a drastic shift in the housing policy, as all municipal-owned houses were to be transferred to individual households who had been mere

tenants for decades. This culminated in what later became known as the *Transfer of Housing Project*, which is an urban version of the land/tenure reform programme (Royston, 1998).

#### **5.2.4 What is the current status of the tenure system in Orlando and Zola?**

In Chapter four, the researcher presented findings on the programme's performance, which indicated that for both Zola and Orlando locations collectively, out of 15 458 properties claimed, 14 986 properties had been registered with a mere 472 still in process and not yet registered. This means that 97% of households enjoy full ownership rights in the form of title deeds, with just 3% having not yet received their titles but still in various stages of the transfer process. This is an indication of government's commitment, efforts and optimal use of resources for urban tenure reform (Department of Human Settlements' Database).

The obvious value of a title deed is that it protects rights and records changes in property ownership. Title deeds also provide individuals with an address, recognising the ownership as being part of the municipality and enabling the owners to secure loans and to pass the house on to other family members when they die.

### **5.3 RECOMMENDATIONS OF THE STUDY**

It is critical to note that the recommendations made apply to all South African pre-1994 black urban settlements or townships, not only to Zola and Orlando locations. This is because they are largely all homogeneous in terms of typology, design, reasons for their establishment, tenure system and tenancy regulatory framework, thus the national and provincial governments use the Enhanced Extended Discount Benefit Scheme to redress the tenure inequalities in all these settlements. The implication is that findings on both Zola and Orlando locations will be relevant and applicable to all these urban townships.

Recommendations from the research study are based on the following areas: Transfer of Housing Project and Process, Project Challenges, Programme Performance and The Impact of the Programme on Benefitting Community.

### **5.3.1 Recommendations on the transfer of housing project and process:**

- It is critical for the City of Johannesburg Municipality and the Provincial Department of Human Settlements to ensure continual and quality service to communities by constantly providing training for the newly recruited personnel who deal with the transfer and conveyancing process. This is important as most of those who were trained when the project started are now either retired or have progressed professionally, and there might be a void of institutional memory and expertise in this regard.
- The state should embark on a vigorous marketing and consumer education campaign so that households that have not applied for title deeds are invited again to apply for ownership. This should entail canvassing for applications by issuing required notices and placing advertisements in the various media.
- In order to expedite the registration process for more properties, it is important that the collection of local authority service charges and rates is separated from the transfer process. The rates departments should therefore collect the outstanding debt separately by not making the settlement of account a prerequisite for the regularisation of beneficiaries' occupational rights into full ownership rights.

### **5.3.2 Recommendations: Project challenges: transfer process**

- The Provincial Department of Human Settlements and the Municipality must fast track the process of township establishment and proclamation in order to facilitate the approval of general plans and resolve the issue of underlying land rights, as this delays the granting of full ownership rights to households in occupation of state-owned properties.
- The Provincial Department of Human Settlements and the Municipality must fast track the process of upgrading township conditions in Orlando and other locations in Soweto from leasehold to freehold, and upon completion of this process,

endorsement of leasehold by the Registrar of Deeds must be facilitated so that they automatically become title deeds, which will also increase the tax base for the state.

### **5.3.3 Recommendations: Programme performance of the transfer process**

- As a post-service delivery support service, the title deed holders must be educated on rights and obligations as property owners, such as payment of rates and taxes.
- Both the Provincial Department of Human Settlements and the Municipality must maintain the database of properties transferred for possible future litigations, and following registration properties must be updated on the assets registers to determine and discern which properties are now privately owned and those still owned by the municipality and which still require regularisation.

The law firms appointed by the state to provide the conveyancing services in the transfer or regularisation of state properties to tenants of records must understand the dynamics of the community, such as tenure inequalities of the past, local politics and culture.

### **5.3.4 Recommendations: Impact of the programme on benefitting community**

- At this stage the researcher recommends that further study is required on the effects of land tilting programmes on low-income households in black urban settlements. The intention is to either repudiate or confirm Hernando de Soto's theory – in essence, that insecure and poorly defined property rights stifle economic development – by looking at the South African context and being cognisant of its history and dynamics, with reference to black urban human settlements.
- The implication of de Soto's theory is that land titling or property rights impact development by altering the ability and incentives for capital formation and giving access to credit markets. It is recommended that a further study be conducted to ascertain the following:

- Whether the government-sponsored land titling programme in the black urban human settlement for low-income households can indeed be associated with economic and financial benefits, such as that disposing a house or property can be used to generate income or used to leverage mortgage finance, as well as to generate income by renting out the house, or
- Whether the low-income households in black urban settlements indeed tend to view their housing asset in a social and cultural context rather than in a financial or economic sense, as the retention of a family house is a sign of respect for the memory of their parents who struggled to acquire full ownership rights and is also viewed as a sacred place to conduct family rituals.

## **5.4 CONCLUSION**

Land is critical to all aspects of human well-being as it provides material goods for livelihood, food and health.

The urban land conversion of tenure rights is said to be neglected in the post-apartheid South Africa in terms of publicity and being documented, as government communicators have failed to create, implement and oversee communication programmes, be it internal or external, that effectively describe and promote the transfer of housing programmes to the general public, and even housing and development practitioners have neglected to undertake studies on urban black human settlements in relation to the evolution of the land tenure rights and different types of tenure systems.

However, the government is well aware that the land transformation agenda would not be complete without reclaiming and restoring the dignity, identity and legitimacy of the black urban settlements and households, so as to dissipate any misperception that urban tenure reform remains opaque or insufficiently addressed.



Land distribution along with spatial and settlement patterns in South Africa have been shaped by historical processes such as colonialism and the apartheid system, which resulted in large-scale land dispossession of black people. The Land Act of 1913 was the first instrument of the newly formed Union of South Africa to codify a system of territorial segregation and racial discrimination inherited from its colonial rulers.

The most important provision of the Land Act of 1913 was the exclusion of the black majority from land ownership in favour of the white minority. A mere 7% of agricultural land was set aside for blacks, even though they comprised nearly 70% of the population. Among its manifold consequences, the law destroyed traditional farming, effectively forcing blacks into overcrowded reserves and to become migrant labour on the white mines and farms. Its effect on the African community is well captured by Sol Plaatje when, in responding to its promulgation, he said as follows: “The South African native found himself, not actually a slave, but a pariah in the land of his birth.”

It should also be taken into account that there were two fundamental aspects of life that apartheid was built on, these being racial identity and access to land. Consequently, the effect of the extent, invasiveness and brutality of the apartheid legislation relating to land ownership cannot be underestimated and still casts a long shadow over the post-apartheid period.

Since land is at the very heart of South Africa’s development agenda, security of tenure is considered a vital priority by the democratically elected South African government. However, the story that unfolded in the South African context during much of the country’s history is marred by marginalisation and a strong enforcement of racism, whereby the black population was denied full property ownership rights, forcefully relegated to townships that were strategically designed on the outskirts of towns, and more importantly, from economic activity and the means to generate wealth.

The masterminds of apartheid also ensured that the movements of black people were curtailed with the implementation of the Pass and other discriminatory laws, which sent

blacks to the economically unviable homelands. This resulted in urbanisation and migration to the urban centres, which eventually had their own inherent challenges and demands including basic services and housing for the poor.

As part of the resistance movement, pressure created by the civic resistance in the former black townships in the mid-eighties made the Black Local Authorities non-functional, with several demands subsequently made by the black community such as “One city, One Tax Base” and “The Transfer of State-owned Houses to the Occupants”.

Consequently, in 1992 during the transition phase, the then Transvaal Provincial Administration initiated a mass national campaign for the transfer of public housing stock to individual households.

This culminated in the introduction of a new subsidy scheme called The Discount Benefit Scheme, which sought to promote home ownership for the black households in the former urban settlements. This scheme was based on the negotiated settlement of the Soweto Accord, which ushered a project that was later known as the *Transfer of Housing Project*, an urban tenure reform programme.

The Housing Transfer Process in terms of this programme entailed the auditing, verification and transfer of council-owned property, the integral aspect being the quasi-judicial Adjudication Hearing forum for housing dispute resolution and determining the occupational legitimacy of the households to be regularised.

The challenge with the tenure system in Soweto was that properties had different types of insecure and subordinate tenure rights such as certificate of occupation, lodgers permit, trading site permit and residential permit, all of which were abolished to fulfil a political vision and mandate for a uniform and secure tenure system, which is full ownership rights in the form of title deeds.

In contrast to the view that the present government has done nothing on tenure or land reform in urban areas, the research study discovered that during the democratic dispensation a number of plans, programmes and policies were developed to deal with tenure inequalities. As testimony to this, statistics and the Deed Office database show that the occupational rights of most households in Zola and Orlando have been formalised into full ownership rights, as almost all the households now have titles for their properties.

It must also be noted that in urban areas, land security and income security are directly interlinked, with property space being used for small businesses and sub-renting. This shows how land security is an essential element of promoting economic development, and that access to space for living and trading is the first foothold that urbanising families establish in cities.

It is clearly and unequivocally proven that despite various challenges faced by the democratic government in addressing the effects of colonialism and apartheid, it has made great efforts, showed strong commitment in terms of remedial legislative framework and optimally utilised limited available resources to address urban tenure inequalities. In Zola and Orlando locations, the focus for this study, 97% of households now have title deeds with a mere 3% still outstanding.

Through the government's remedial programme on the restoration of ownership rights, households' rights to properties are now legally protected through title deeds. This has allowed the occupants to finally have a stable and reliable address, as well as being recognised as part of the municipality and able to secure loans and pass their properties on to the next generations. This serves as proof that the democratic government has made inordinate efforts through legislative measures and other resources to redress land tenure inequalities and injustices of the past, as with the formalisation of townships, townships are no longer viewed as mere labour reserves but as permanent human settlements or residential areas with socio-economic amenities. Furthermore, with title deeds now in their possession, the urban black households no longer feel as if they are simply temporary sojourners for cheap labour but are finally permanent residents in their

respective urban areas. Through the land titling programme, the pride and dignity of urban black households has been restored.

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